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IN THE

United States Circuit Court of Appeals For the Ninth Circuit

The Washington Water Power Company,
a Corporation,

Appellant,

vs.

Kootenai County, a Municipal Corporation,
W. A. Thomas as Treasurer and Ex-
Officio Tax Collector of Kootenai County,
Idaho, and C. O. Sowder, Clerk of the
District Court and Ex-Officio Auditor
and Recorder of Kootenai County, Idaho,
and C. O. Sowder and W. A. Thomas,
Individuals,

Appellees.

Transcript of the Record

*Upon Appeal from the United States District Court
for the District of Idaho, Northern Division.*

FILED

NOV 19 1920

F. D. MONCKTON,

CLERK

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For the Ninth Circuit

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Appellees.

Transcript of the Record

*Upon Appeal from the United States District Court
for the District of Idaho, Northern Division.*

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

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IN THE
District Court of the United States
For the District of Idaho
Northern Division

THE WASHINGTON WATER POWER
COMPANY, a Corporation,

Plaintiff,

vs.

KOOTENAI COUNTY, a Municipal Corporation; W. A. THOMAS, as Treasurer and ExOfficio Tax Collector of Kootenai County, Idaho, and C. O. SOWDER, Clerk of the District Court and Ex-Officio Auditor and Recorder of Kootenai County, Idaho, and C. O. SOWDER and W. A. THOMAS, Individuals,

Defendants.

No. 732.

AMENDED BILL OF COMPLAINT.

The Washington Water Power Company, a corporation of the State of Washington and a citizen of said state, files this its amended bill of complaint against the above named defendants, Kootenai County, a municipal corporation organized and existing under and by virtue of the laws of the State

of Idaho and a citizen of said state, and W. A. Thomas, as Treasurer and Ex-officio Tax Collector of Kootenai County, Idaho, C. O. Sowder, Clerk of the District Court and Ex-Officio Auditor and Recorder of Kootenai County, Idaho, and C. O. Sowder and W. A. Thomas, individuals, and the plaintiff thereupon complains and says:

I.

The plaintiff is now and was at all of the times mentioned in the complaint a corporation created and existing under and by virtue of the laws of the State of Washington and is now and at all of the times mentioned in this complaint was a citizen of the State of Washington, and that it has at all of the times herein mentioned been authorized and empowered to do business in the State of Idaho and to acquire and hold property in said state by virtue of a full compliance with the laws of the State of Idaho relating to foreign corporations.

II.

That the defendant, Kootenai County, was at all of the times herein mentioned and now is a municipal corporation created, organized and existing under and by virtue of the laws of the State of Idaho, and was at all of the times herein mentioned and now is a citizen of said state.

III.

That the defendant, W. A. Thomas, is the duly elected, qualified and acting Treasurer and Ex-officio Tax Collector of Kootenai County, Idaho, and

has been such official for more than one year last past, and is now and was at all of the times herein mentioned a citizen and resident of the State of Idaho.

IV.

That the defendant C. O. Sowder is the duly elected, qualified and acting Clerk of the District Court and Ex-officio Auditor and Recorder of Kootenai County, Idaho, and is now and was at all of the times herein mentioned a citizen and resident of the State of Idaho.

V.

The jurisdiction of the United States District Court for the District of Idaho over this suit is invoked and depends upon two grounds, to-wit:

First: Upon the ground that the suit is of a civil nature and the amount and matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars (\$3,000), and arises under the Constitution of the United States and involves the construction and application of the Fourteenth Amendment to the Constitution of the United States and particularly the clauses of the Fourteenth Amendment to the Constitution of the United States known as the "due process" and "equal protection" clauses of said amendment;

Second: Upon the ground that the plaintiff is now and at all of the times mentioned in this complaint was a citizen and resident of the State of Washington and that the defendants and all of them are now and at all of the times mentioned in

the complaint were citizens and residents of the State of Idaho, as appears from the first, second, third and fourth paragraphs of this bill of complaint, and that the amount and matter in controversy in this suit exceeds in value, exclusive of interest and costs, the sum of three thousand dollars (\$3,000).

VI.

The Washington Water Power Company is authorized and empowered by its articles of incorporation to engage in the generation, distribution and sale of electric energy and power and to erect, construct, maintain and operate electric power plants and transmission lines for the development and use of water power, and to do all things necessary and incident thereto; to furnish electricity for lighting and other purposes and generally to engage in power transmission, distribution and sale.

Plaintiff is now and at all of the times herein mentioned has been as to the performance of all such duties a public service corporation.

VII.

That for many years last past the plaintiff has been and now is the owner of a tract of land situated in Section 3, Township 50 North, Range 5 West Boise Meridian, near Post Falls, Idaho, which included within it the beds and banks of the Spokane river, at which place there was a natural water fall and upon which property the plaintiff has constructed dams and an electric power plant.

and machinery for generating and transmitting electric current and electric power.

That the plaintiff is also the owner of power transmission lines extending into the counties of Kootenai, Shoshone, Bonner, Latah and Nez Perce in the State of Idaho, and of various transformers and transforming stations and other property necessary to the distribution and use of said electric energy, and in addition thereto owns certain municipal electric lighting plants in the County of Latah, Idaho.

That this plaintiff is also the owner of an electric lighting system in the City of St. Maries in the County of Benewah, Idaho.

That it also owns, having secured by condemnation, purchase or grant, certain easements to back and overflow with water lands along the Spokane, St. Joe, St. Maries and Coeur d'Alene rivers and Lake Coeur d'Alene in said State of Idaho.

A more particular description of the operating property of this plaintiff is deemed unessential to be incorporated herein as to describe the same by metes and bounds or otherwise particularly would require several hundred separate descriptions and would immeasurably and unnecessarily lengthen this complaint. Should the defendants or any of them wish a particular description thereof the plaintiff offers to furnish the same.

That the property above referred to constitutes the operating property of this plaintiff in the State

of Idaho, and all thereof is reasonably necessary for the maintenance and successful operation of its electric current transmission lines and the discharge of its public duties.

That the plaintiff was the owner of all of said property on the second Monday of January, 1918, and such property was subject to assessment and taxation in the State of Idaho upon such date.

VIII.

On and before the second Monday of July in the year of 1918 plaintiff prepared a list of all such operating property upon blanks supplied by the State Auditor of the State of Idaho, which list was subscribed and sworn to by the Secretary of this plaintiff and delivered to the State Auditor of the State of Idaho before the second Monday of July, 1918, as prescribed by the statutes of the State of Idaho and especially Section 89 and succeeding sections of Chapter 587 of the Laws of 1913 now incorporated in the Compiled Laws of Idaho of 1918 in Chapter 133 as Section 89 and succeeding sections, and truly setting forth the information required by said statutes. And this plaintiff stood ready at all times to give any additional information which the State Board of Equalization of the State of Idaho might request of it.

That in addition thereto this plaintiff did on or before the second Monday of July in the year of 1918 furnish to the State Auditor as Secretary of the State Board of Equalization of the State of

Idaho, a certified copy of the annual report of its Board of Directors or other officers to the stockholders, as provided by the laws of the State of Idaho and particularly Section 91 of Chapter 58 of the Laws of 1913 now incorporated in the Compiled Laws of Idaho of 1918 as Section 91 of Chapter 133.

In the said report furnished to the said Auditor of the State of Idaho this plaintiff did furnish very complete and full information as to the character of the property of the plaintiff, its capital stock, its income and all other data relating to the affairs of the company provided for in said blanks and available, the same being full and detailed information as to the property, value of the property, business, income and expenditures of this plaintiff.

IX.

The State Board of Equalization of the State of Idaho did not request or require the attendance of any officer, manager or agent of this plaintiff or make further inquiry of the plaintiff as to the value of any of its property in the State of Idaho, and made no request for any other or further information or facts than such as had already been furnished to it.

X.

On the fourteenth of August, 1918, and during the annual 1918 meeting of the said State Board of Equalization of the State of Idaho, at the request

of this plaintiff, its counsel, John P. Gray, and its Auditor, J. S. Simpson, appeared before the Board of Equalization on behalf of this plaintiff in relation to the assessment of the property of this plaintiff and to the assessment of other property in the State of Idaho; that at such hearing, in addition to the facts already presented by this plaintiff, its said counsel presented to and asked the consideration by the State Board of Equalization of the decision and judgment of the Public Utilities Commission of the State of Idaho in the case of Joseph H. Peterson, Attorney General v. The Washington Water Power Company, wherein the said commission had on the third day of June, 1918, made and entered its judgment and opinion valuing the property of the Washington Water Power Company in the State of Idaho after an investigation by officers and engineers of the said Commission and the taking of testimony and the investigation of the cost of reproduction and other facts essential to an understanding of the value of the said property. That said decision not only was presented to but was already in the possession of the said State Board of Equalization and was at the said hearing considered by the said Board. That the valuation of the said property of the Washington Water Power Company by the said Public Utilities Commission of the State of Idaho was made as of the thirty-first day of December, 1917.

That the said suit above referred to of Joseph H. Peterson, Attorney General of the State of Idaho, against the Washington Water Power Company was brought for the purpose among other things of having determined and fixed the value of the property of the Washington Water Power Company in the State of Idaho; that the said judgment and decision was rendered only after an appraisement of this plaintiff's property by officers and engineers of the said Public Utilities Commission of the State of Idaho.

Plaintiff further says that between said thirty-first day of December, 1917, and the second Monday of January, 1918, there was no change in the value of said property.

XI.

Plaintiff further alleges that its said counsel called the attention of the said State Board of Equalization to the fact that it had been the practice in the State of Idaho by the assessors of the various counties not to assess property at its full cash value and that the property of this plaintiff should be assessed upon the same percentage basis of its value as was the property of individuals and others assessed by the assessors in the several counties of the State, and at that time called attention to the fact that farm property and other property was not assessed at a sum in excess of 50 per cent of its full cash value.

XII.

Plaintiff further alleges that the said State Board of Equalization, in fixing the value of the property of this plaintiff, had no other evidence or facts before it and that the members of the said Board did not hear or receive any other information concerning the value of the said property except that hereinbefore referred to, to-wit, the said reports of this plaintiff and the said judgment and opinion of the said Public Utilities Commission of the State of Idaho except a letter from Fred E. Wonnacott, Assessor of Kootenai County, Idaho, a copy of which is attached hereto as Exhibit 1 and made a part hereof.

In addition to the foregoing the plaintiff did file one additional statement showing its revenues for the first six months of 1917 and the first six months of 1918 from the Coeur d'Alene Mining District in Idaho and a list of consumers disconnected and new accounts from January 12, 1917, to August 1, 1918, giving the consumer's name, maximum demand and annual revenue therefrom and also showing the percentage of the gross income received by the plaintiff in Idaho and paid as taxes in said state.

XIII.

Plaintiff further alleges that according to the said judgment and decision of the said Public Utilities Commission of the State of Idaho the value of

the operating property of this plaintiff in Idaho on the second Monday of January, 1918, was \$2,438,978.

In addition to the operating property of this plaintiff in the State of Idaho which was appraised and a value thereon fixed by the Public Utilities Commission of the State of Idaho the plaintiff owned and operated on the second Monday of January, 1918, a distributing system in the City of St. Maries, Benewah County, Idaho, which was not appraised by the said Public Utilities Commission of the State of Idaho, but which was included in the assessment of the operating property of this plaintiff by the said State Board of Equalization. That the cost of reproduction new of the said distribution system at St. Maries was on the second Monday of January, 1918, the sum of \$43,097 and its actual value at that time was \$31,461. That the total value of the operating property of this plaintiff in the State of Idaho on the second Monday of January, 1918, was not in excess of the sum of \$2,470,439. That the cost of reproduction new of said property was not in excess of the sum of \$3,384,413.

That according to the statement filed by this plaintiff of the value of its property for assessment purposes in the State of Idaho the value thereof was somewhat less than as found by the said Public Utilities Commission of the State of Idaho.

XIV.

That thereafter and on the seventeenth day of August, 1918, the said State Board of Equalization of the State of Idaho assessed the operating property of this plaintiff in the State of Idaho at the sum of \$2,750,000.

Included in the operating property of plaintiff so assessed by the State Board of Equalization in 1918 was certain property standing in the name of Idaho-Washington Light and Power Company. The plaintiff herein owned all of the stock of said company and makes no question of the assessment of the property thereof against this plaintiff except as to the amount at which said property was assessed. The same had been, as a matter of fact, used and operated as a part of the one system for some years last past and on the second Monday of January, 1918, was a part of the operating property of this plaintiff in the State of Idaho.

That the assessment made of the said operating property of this plaintiff by the said State Board of Equalization of the State of Idaho subjects the plaintiff to taxes upon its property at a valuation in excess of the full cash value of said property on the second Monday of January, 1918.

XV.

That the property of this plaintiff so assessed by the said State Board of Equalization is situated in several counties of the State of Idaho, to-wit, in the Counties of Kootenai, Shoshone, Bonner, Latah, Nez

Perce and Benewah, and is situated in various taxing districts within said counties, to-wit, school districts, road districts, cities and villages, and there was for the year 1918 levied in said various counties in addition to state and county taxes, municipal, school district and road district taxes for the said different municipal corporations. It is all of these taxes, state, county, school, road and municipal which are involved in this controversy.

As to all of said taxes the said assessment of this plaintiff's operating property above referred to subjects this plaintiff to taxation in all of said several districts, municipalities and counties upon a valuation in excess of the full cash value of its property on the said second Monday of January, 1918.

In assessing the operating property of the plaintiff the said State Board of Equalization disregarded all of the evidence and all of the facts before it with reference to the value of said property.

In the assessment of said property of plaintiff the said Board adopted as a method after first pretending to determine the value thereof, the taking of said value for the purposes of assessment at 100 per cent of the full cash value of said property so found by the Board.

Plaintiff alleges that the said State Board of Equalization disregarded all of the evidence and facts and information before it or within its knowledge or possession or within the knowledge or pos-

session of any of the members thereof with reference to the value of the operating property of this plaintiff in the State of Idaho in fixing the valuation; that then said Board adopted an improper and unjust and inequitable method in assessing the plaintiff's operating property for taxation in taking 100 per cent of its actual cash value as found by the Board and in taking any percentage over 50 per cent of the full cash value as found by the said Board.

XVI.

Plaintiff states that for many years last past, including the taxing year 1918, the taxes for which are here in controversy, the local assessors of the various counties in the State of Idaho assessed the property of individuals and of corporations within their sphere of duty at less than 50 per cent of the full cash value of their said property; that for the year 1918 the said assessing officers habitually, intentionally, systematically and generally throughout the State of Idaho assessed the property of individuals and of corporations at less than 50 per cent of the full cash value of said property and that the assessors of the said counties of Kootenai, Shoshone, Bonner, Latah, Nez Perce and Benewah did so assess for the said year 1918 intentionally and systematically and generally the property of individuals and of corporations within their sphere of duty at less than 50 per cent of the full cash value of said property.

XVII.

Plaintiff is informed and believes and upon such information and belief alleges that it is a fact that the assessors of the State of Idaho for the year 1918 had an understanding, either express or implied, that the property to be assessed by them and within their sphere of duty should be assessed at 50 per cent of its full cash value, and plaintiff alleges that the assessors in the State of Idaho and particularly in the counties where the property of this plaintiff is situated and subject to taxation and in the County of Kootenai, did assess the property of individuals and corporations within the sphere of their duty for said year at not to exceed 50 per cent of the full cash value thereof on the second day of January, 1918.

XVIII.

Plaintiff further alleges that a large part of the said property within the said counties and particularly a large part of the property in Kootenai County was assessed at less than 50 per cent of its full cash value.

XIX.

Plaintiff further alleges that it is informed and believes and upon such information and belief alleges that the State Board of Equalization of the State of Idaho in office during the year 1918, being the same board which assessed the operating property of their plaintiff for the year 1918, was and the members thereof were parties to and had

knowledge of the understanding that the assessors of the State of Idaho should assess the property in their several counties and within their sphere of duty at not to exceed 50 per cent of the full cash value thereof.

XX.

Plaintiff further alleges that the said understanding that the property should be so assessed at not to exceed 50 per cent of its full cash value was had prior to the meeting of the said State Board of Equalization of the State of Idaho for the year 1918 and prior to the assessment of the plaintiff for said year by said Board, and that the said State Board of Equalization of the State of Idaho and the members thereof were parties to such understanding with the said assessors and had knowledge thereof, and that the said understanding was had and entered into prior to the meeting of said Board.

XXI.

Plaintiff is further informed and believes and upon such information and belief alleges that frequently throughout the meeting of the said State Board of Equalization of the State of Idaho during the year 1918 and at which the property of this plaintiff was assessed for said year, reference was made in open meeting to the understanding that the property assessed by the assessors of the State of Idaho should be assessed at not to exceed 50 per cent of its full cash value.

XXII.

Plaintiff further alleges that the fact of such systematic assessment upon this or substantially similar basis for many years last past has been a matter of public notoriety in the State of Idaho and is within the actual knowledge of the State Board of Equalization and was within its knowledge during its meeting of the year 1918 at which the property of this plaintiff was assessed.

XXIII.

Plaintiff further alleges that 75 per cent of the property of the State of Idaho is assessed by the county assessors. That in the County of Kootenai, State of Idaho, during the year 1918, there was assessed by the assessor of said county property of an equalized valuation of \$11,595,837 out of a total valuation in the county of \$18,396,436, and the said property so assessed by the said assessor in Kootenai County, Idaho, amounting to \$11,595,837 was assessed and taxed for the year 1918 at not to exceed 50 per cent of its full cash value.

As a result of such methods of assessment hereinbefore referred to, 75 per cent of the property of the State of Idaho is required to pay state and county taxes, including school district, road district and municipal taxes, upon an average of not to exceed 50 per cent of its full cash value, whereas this plaintiff, by the action of the said State Board of Equalization of the State of Idaho, is required to pay such taxes upon its property at a val-

uation in excess of its full and fair cash value instead of taking 50 per cent, the average rate applied by assessing officers to the vast body of property in the State of Idaho.

In Kootenai County, Idaho, this plaintiff is required to pay taxes upon its property at a valuation in excess of its full cash value, whereas the vast body of property in said county is assessed and valued for taxation purposes at and required to pay taxes upon not to exceed 50 per cent of its full cash value.

XXIV.

That the said assessment above referred to by the said several county assessors at less than 50 per cent of the full cash value of the property assessed by them were permitted to stand and were not changed by the said State Board of Equalization and as a result thereof for the year 1918 by far the greatest part of the property of the State of Idaho and by far the greater part of the property in Kootenai County, Idaho, and in the other counties in which the property of this plaintiff is situated was assessed for taxation purposes at less than 50 per cent of its full cash value.

XXV.

Plaintiff further alleges that the agricultural lands of the State of Idaho and particularly large amounts of said land upon which the State of Idaho has loaned money situated throughout the state and in the County of Kootenai and in the other counties

where the property of this plaintiff is situated and subject to taxation, have been systematically, knowingly, generally and habitually assessed at far less than 50 per cent of their cash value, and such facts were known to the said State Board of Equalization and disregarded by that Board at its said 1918 meeting in the equalization of the property of the state and in the assessment of the property of this plaintiff.

That the said agricultural lands and particularly the lands upon which loans have been made by the State of Idaho were assessed at far less than 50 per cent of their full cash value for the year 1918 intentionally, knowingly, habitually and generally by the said local assessors, and said assessments were permitted to stand in 1918 and have been permitted to stand year after year by the said State Board of Equalization of the State of Idaho knowingly, intentionally, habitually and generally.

XXVI.

That the Board of County Commissioners of the County of Kootenai, meeting as a County Board of Equalization, did not in any case raise any assessment for said year made by the assessor of said County of Kootenai; that the only changes made by said board in the assessment roll for said year as returned by the assessor were in cases where petitions were made for a reduction by taxpayers. In Kootenai County eleven petitions for a reduction in

the assessed value of property were filed by taxpayers. In nine of the eleven cases the assessment as made by the County Assessor was reduced, and in the other two cases no change was made in the assessment as made by the assessor, and except for the said nine reductions totaling \$2820.00, no change was made in the assessment roll for said year by the said County Commissioners acting as a Board of Equalization.

Plaintiff alleges that the said County Board of Equalization intentionally, systematically and generally permitted the assessment of the property of individuals and of corporations within said county and within their sphere of duty, to stand and remain at not to exceed 50 per cent of the full cash value of said property, and except as to the above reductions in the assessed valuation as fixed by the assessor, said board did not change the said assessment roll as made up by the assessor; and plaintiff states that said board did not in any instance raise the said assessed valuation of any property made by said County Assessor in the said county.

Plaintiff further alleges that the County Board of Equalization in Kootenai County and the County Boards of Equalization in the other counties of the state, have habitually, intentionally, systematically and generally throughout the State of Idaho, and did so intentionally, systematically and generally throughout the state in the year 1918, equalize for assessment purposes the property within their

spheres of duty at not to exceed 50 per cent of the full cash value thereof. And the said County Board of Equalization has, during many years last past, and as is a matter of general notoriety did, in the year 1918, intentionally, systematically and generally permit the said assessment of the assessors hereinbefore referred to, to stand.

XXVII.

That in addition thereto all of the other property in the State of Idaho in the year 1918 subject to assessment and within the sphere of duty of the local assessors to assess was assessed as hereinbefore alleged at not to exceed 50 per cent of its full cash value and much of it at less than 50 per cent of its full cash value, and the said State Board of Equalization intentionally, generally and systematically permitted the said assessments to stand at not to exceed 50 per cent of the value thereof, whereas the said Board did assess the property of this plaintiff at more than its full cash value, and by its said actions herein complained of the said State Board of Equalization did deny to the plaintiff the benefit of equalization to its great and irreparable damage and that by virtue of the said methods of assessment of the property of individuals and corporations within the sphere of the duty of the local assessors and the equalization thereof by the State Board of Equalization as hereinbefore alleged and the assessment of the property of this plaintiff as

hereinbefore alleged, this plaintiff has been deprived of its property without due process of law and denied the equal protection of the law in violation of the Fourteenth Amendment of the Constitution of the United States, in violation of the Constitution of the State of Idaho and in disregard of the laws of the said state, and the plaintiff hereby sets up and relies upon the protection of said Federal and State Constitutions and laws.

XXVIII.

That the State Auditor, as Secretary of the State Board of Equalization, did transmit to the County Auditor of Kootenai County, Idaho, a certified statement, showing the assessment of the property of this plaintiff and situated wholly or partly within the County of Kootenai, State of Idaho, specifying the number of miles of transmission line, the equalized value per mile and the total equalized value of the property of this plaintiff in said county and in any incorporated city, town or village and in any other taxing district into which the electric power transmission lines of the plaintiff extended.

XXIX.

In the distribution of the property of this plaintiff among the various taxing districts the said State Board of Equalization has taken the value of the property or attempted to take the value of the property in each county and divide the value of that property so found to be in each county by the number of miles of transmission lines in that county and

then assessed it at so much per mile of transmission line through the various taxing districts, roads, schools and municipalities found within the said county. In that manner the power plant of the plaintiff situated at Post Falls is so assessed as the taxes are levied on part of the value thereof in a large number of school districts, road districts and in certain municipalities. The method is illegal, but for the purpose of this suit and in this suit this illegality which results in taxing the plaintiff very much more than it should be taxed and much more for road, school and other purposes than the value of its property in the county should be required to bear, is not questioned.

XXX.

The County Auditor of Kootenai County, Idaho, the predecessor in office of the defendant, C. O. Sowder, did receive from the Secretary of the State Board of Equalization the assessment upon the property of this plaintiff credited, assessed or apportioned to the County of Kootenai and did enter upon the assessment roll the assessment upon the property of this plaintiff, adjusting the valuations among the incorporated cities, towns and villages and other taxing districts in accordance with the said certified statement of the said Secretary of the State Board of Equalization.

XXXI.

Plaintiff further alleges that the assessment roll of Kootenai County, Idaho, was delivered in accord-

ance with the statutes of Idaho to the tax collector of Kootenai County, Idaho, being the defendant W. A. Thomas, Treasurer and Ex-officio Tax Collector of said county.

That thereafter a tax notice was sent to this plaintiff demanding payment of taxes, state, county, school district, road district and municipal based upon the said assessment hereinbefore complained of.

XXXII.

That on the thirtieth day of December, 1918, this plaintiff tendered to the defendant W. A. Thomas as Ex-officio Tax Collector of Kootenai County, Idaho, the sum of \$23,080.84, the same being 55 per cent of the taxes which had been extended upon the assessment or tax rolls of Kootenai County against this plaintiff on account of its operating property. Plaintiff alleges that it has paid its taxes on its non-operating property in said county assessed by the county assessor.

At the time of the said tender plaintiff stated to the said W. A. Thomas, tax collector as aforesaid, that it did not request, require or desire of him a receipt in full; that it tendered said sum believing it to be all that was justly or otherwise due on account of taxes for the year 1918 upon its operating property in said county, but that it simply desired a receipt for that much money; that said defendant W. A. Thomas, tax collector as aforesaid, refused to accept the said tender or to receive the said

money, said Thomas stating that he would only receive either the money to the full amount of the taxes extended on the tax or assessment rolls of said Kootenai County against the defendant or half thereof, giving receipt either for the said full amount or for the first installment of one-half, and upon the understanding that the plaintiff was paying the first installment upon its taxes for the year 1918. The said Thomas refused to give any other receipt for said money or to receive the same unless the plaintiff tendered and paid the full amount of its taxes or tendered and paid the first installment thereof, being one-half thereof, upon the distinct understanding that it was one-half and the first installment of taxes.

Plaintiff thereupon notified the said Thomas that it would hold the said tender good and that he could have and receive said sum of money at any time, simply giving a receipt for that amount of money. The plaintiff has retained the said sum separate and apart from all other moneys and property held by it, and now again tenders the same to the defendants and offers to either pay the same to the said Kootenai County or to such other of the defendants as may be entitled to receive the same or to deliver the same unto this court to abide such judgment, order and decree as this court may make.

XXXIII.

This plaintiff further alleges that it has tendered the sum legally due upon its said property to the

said tax collector; that the plaintiff has been at all times and is now ready and willing to pay any and all legal and just taxes levied against the said plaintiff's properties and each and all thereof, and to pay any and all taxes justly and legally due upon its said property and upon all thereof, and the plaintiff now offers to deposit with the court or the clerk thereof or with such depository as the court shall direct, either money or liberty bonds in such amount as the court shall direct, or to give a bond or other security in such sum as the court may direct to assure the payments to the defendant county of such taxes or moneys on account of taxes as it shall be ultimately determined is due from the plaintiff on account of taxes on its operating property for the year 1918 in the said County of Kootenai.

XXXIV.

Plaintiff further alleges that the defendants wrongfully pretend that the plaintiff is indebted to the said Kootenai County for taxes to the amount of \$41,965.16, all of which tax is levied and demanded without warrant at law save and except the sum of \$23,080.84, and also the defendants claim that the plaintiff is indebted on account of various penalties which the defendants have wrongfully attempted to attach and charge against this plaintiff.

XXXV.

That said W. A. Thomas acting as ex-officio tax collector of the County of Kootenai, State of Idaho,

did on the 13th day of January, 1919, deliver to the County Auditor and by said County Auditor there was filed a certain delinquency tax certificate January 27, 1919, to Kootenai County, which said pretended delinquency tax certificate showed upon its face that the plaintiff had failed to pay any tax for the year 1918 and the said certificate expressed upon its face that this plaintiff was delinquent in the payment of all of its taxes in Kootenai County for said year which was shown upon said certificate as follows:

State and County.....	\$26,556.16
Penalty	1,593.37
Special Road Tax and Penalty....	875.29
Special Highway Tax and Penalty..	3,504.78
Special School Tax and Penalty...	11,424.15

A total of\$44,483.06

That said tax certificate is numbered 3409 and is declared to be for a 1919 sale of taxes for the year 1918 sold to the County of Kootenai, State of Idaho, and bears upon its face the statement that it carries an additional penalty of 1% per month; that the same has been filed with the office of the said County Auditor and Recorder of Idaho and the records of said county show the same as a lien and cloud upon the title of this plaintiff.

XXXVI.

Plaintiff further alleges that the said defendants hold out for sale to whomsoever will buy the same the said delinquency tax certificate, and said defendants also give out and threaten that if the

property is not redeemed by the payment of the said sums so demanded together with the said penalties and additional penalties which the defendants pretend shall accrue thereon, that they will three years from the date of the said pretended delinquency certificate through the defendant auditor or his successor in office, make to the defendant County of Kootenai or other holder of such delinquency certificate a deed to the property of this plaintiff described in the certificate pretending to convey plaintiff's property in the said County of Kootenai or to whatever person may be the holder of such certificate.

XXXVII.

The defendants claim that the said delinquency certificate above described constitutes a lien upon the property of this plaintiff, and in fact the same does constitute a cloud upon the title of this plaintiff on its operating property in the County of Kootenai, State of Idaho.

Plaintiff further alleges that the said defendants assert, hold out and pretend that the said total sum mentioned in the said certificate of \$44,483.06, carries a penalty of 1% per month.

Plaintiff further alleges that the said pretended taxes are and will be an apparent lien upon the title of the plaintiff to its property in said County of Kootenai and upon the said property against which the same are pretended to have been assessed and levied, and that the said pretended delinquency cer-

tificate is and will be an apparent lien thereon. Plaintiff alleges that the same constitutes a cloud upon the title of plaintiff to its property in said County of Kootenai and should the said defendants issue any deed thereon the same would constitute a cloud upon the title of this plaintiff to its said property and work great wrong and injury to the plaintiff. For such wrongs and injury plaintiff will be put to great and unnecessary damage and costs for which it can receive no compensation. That the said taxes, the said delinquency certificates and any deed which might be issued by the defendants or the successors of any thereof both greatly impairing and deteriorating and will impair and deteriorate the market value of the property of plaintiff and will interfere with the credit of the plaintiff.

Plaintiff has no adequate, plain or speedy remedy at law or any remedies whatever save and except in equity. A large portion of said pretended taxes have been levied and are claimed by the defendants on account of payment of taxes levied by the State of Idaho, and if such taxes should be paid plaintiff, such portion thereof would be by the said County paid into the State Treasury and plaintiff could not recover the same or any portion thereof in any action; that a portion thereof has been levied for school district, road district and municipal purposes and if plaintiff should pay the same, such portions would be paid over and transferred to such respective municipal corporations and districts, and plain-

tiff would in order to recover such unlawful taxes so paid, be compelled to bring separate suits against the said several road districts, school districts and municipalities and against Kootenai County, and thereby plaintiff would be subjected to a multiplicity of suits.

Plaintiff further alleges that the said operating property in said Kootenai County, constitutes a part of its operating property in the State of Idaho, used in the discharge of its public duties, and the sale of said property and the clouding of the title thereto would and will constitute an interference with this plaintiff in the discharge of its public duties and subject it to other actions and will subject it to great loss and damage on account of the impairment of its title. That plaintiff will be deprived of its property without due process of law and its property subject to illegal liens and clouds.

WHEREFORE plaintiff prays:

1. That defendants be required to answer this complaint, but not under oath, plaintiff expressly waiving the oath of defendants to the answer.

2. That the said pretended delinquency certificate hereinbefore referred to be declared void and null and that the defendant county and the other defendants be enjoined and restrained from asserting or attempting to assert any lien upon the several pieces of property or any of the property of plaintiff for or on account of said pretended taxes or of said pretended delinquency certificate.

3. That the said defendants, their deputies and successors, and each of them, be forever enjoined and restrained from disposing of said pretended delinquency certificates or from issuing any deed to the property of the plaintiff or any part thereof, or from taking any other action for the collection of any of the taxes mentioned in this bill of complaint, levied as set forth in said bill against this plaintiff, or from in any way proceeding to collect the same in any manner except as directed by this court.

4. That all said taxes in the said County of Kootenai, State of Idaho, for the year 1918, be declared null and void except for the sum of \$23,080.84, and that all penalties which the said defendants have pretended to add thereto or to thereafter claim be declared null and void.

5. That the Court ascertain and determine what taxes are fairly and equitably due upon the property of the plaintiff described in the bill of complaint for the year 1918, and that upon the payment thereof to the defendants, said defendant county, its officers and agents be required and commanded to accept the same as in full for taxes for the year 1918 from the said property of plaintiff, and to enter said taxes against the said property upon the books of said county as paid in full, and that the defendant county, its officers, agents and their successors in office and the successors of each of them be forever enjoined and restrained from asserting or at-

tempting to compel any other or further taxes upon said property for the year 1918.

6. That the plaintiff have such other and further relief as may be consistent in the premises and with the principles of equity, including its costs and disbursements herein;

7. That the defendants, their deputies, agents and employees be restrained during the pendency of this action from disposing of said delinquency tax certificate or from taking any steps whatever for the purpose of collecting or enforcing against this plaintiff any taxes for the year 1918, and that by the said order said defendants be required to accept the said sum of \$23,080.84.

JOHN P. GRAY,

W. F. McNAUGHTON,

Attorneys for Plaintiff.

P. O. Address and Residence, Coeur d'Alene, Idaho.

STATE OF WASHINGTON,

County of Spokane.—ss.

D. L. Huntington being first duly sworn upon his oath, deposes and says:

That he is an officer, to-wit: President of the Washington Water Power Company, the plaintiff above named, that he has read the foregoing complaint, knows the contents thereof, has knowledge of the facts therein set forth, and that the matter

stated therein are true to the best knowledge, information and belief of affiant.

D. L. HUNTINGTON.

Subscribed and sworn to before me this 31st day of May, 1919.

S. C. SCOTT,

(N. P. Seal) *Notary Public.*

for the State of Washington,
residing at Spokane.

EXHIBIT 1.

Coeur d'Alene, Idaho,

August 6, 1918.

Hon. Clarence Van Deusen,

Boise, Idaho.

Dear Sir:

Enclosed find a list of Washington Water Power Company Easement lands and in making this assessment, the Board could value these lands and spread the same on the record in a lump sum-to-wit:

1173.47 Acres of Easement Lands as shown by
the list at \$25.00 per acre. \$194,523.00.
and deduct this amount from Kootenai County total
valuation of the Company property and carry the
balance along the pole line at so much per mile.

Truly yours,

FRED E. WONNACOTT,

Assessor.

Endorsed, Filed May 31, 1919,

W. D. McReynolds, Clerk.

(Title of Court and Cause.)
No. 732.

APPEARANCE.

Service of copy of the complaint in the above entitled cause is hereby admitted this 5th day of May, 1919 and on behalf of the said defendants I agree to enter an appearance in said cause without service of subpoena, the said service of subpoena being waived. The time for pleading to be the usual time provided in a subpoena and commencing to run on this date.

BERT A. REED,
Attorney for Defendants.

Endorsed, Filed May 5, 1919,

W. D. McReynolds, Clerk.

By L. M. Larson, Deputy.

(Title of Court and Cause.)
No. 732.

MOTION TO DISMISS AMENDED BILL
OF COMPLAINT.

Now comes the defendants in the above entitled action and move that the Amended Bill of Complaint of plaintiff on file herein be dismissed for the following reasons:

I.

That said Amended Bill of Complaint does not state facts sufficient to constitute a cause of action or suit in equity in favor of the plaintiff and against said defendants, or any of them.

II.

That the facts alleged in said Amended Bill of Complaint are insufficient to constitute a valid cause of action in equity in favor of the plaintiff and against said defendants, or any of them.

III.

That there is a non-joinder of parties defendant in said suit or action as follows:

(a) That the State Board of Equalization of the State of Idaho is a necessary party defendant for the reason that it appears upon the face of said Bill that the assessment complained of therein was made by said State Board of Equalization.

(b) That the State of Idaho is a necessary party defendant for the reason that it appears on the face of said Bill that a portion of the taxes involved in said suit are State taxes and the State of Idaho is directly interested in the result of said suit.

(c) That the Counties of Shoshone, Bonner, Latah, Nez Perce and Benewah in the State of Idaho are necessary parties defendant for the reason that it appears on the face of said Bill that the assessment complained of was made by the State Board of Equalization upon property of the plaintiff situated in each of said counties, as well as in the County of Kootenai, and that each of said counties is directly interested in the result of said suit, and that if the plaintiff is granted the relief prayed for, the valuation of said property in each of said

counties will be materially and substantially affected and the amount of taxes to be collected by each of said counties from the plaintiff on said property will be materially reduced.

(d) That the school districts, road districts, cities and villages referred to in paragraph XV of said Bill are necessary parties defendant for the reason that it appears on the face of said Bill that the valuation of plaintiff's property apportioned to said several taxing districts is involved in said suit, and each of said taxing districts are interested in the result of said action and will be materially affected thereby.

(e) That each and all of the parties above named are necessary parties defendant for the reason that they each claim an interest in the matter in controversy adverse to the plaintiff and the presence of each of them is necessary for a complete determination of the cause.

WHEREFORE, defendants pray that said Amended Bill of Complaint be dismissed and that they recover their costs and disbursements herein expended.

BERT A REED,
Prosecuting Attorney of Kootenai
County, Idaho.

POTTS & WERNETTE,
Attorneys and Solicitors for De-
fendants.

Residence and P. O. Address,
Coeur d'Alene, Idaho.

Endorsed, Filed June 2, 1919,

W. D. McReynolds, Clerk.

At a stated term of the District Court of the United States for the District of Idaho, held at Coeur d'Alene, Idaho, on Monday, June 2, 1919, the following proceedings, among others, were had, to-wit:

Present:—

Hon. Frank S. Dietrich, Judge.

Washington Water Power Company,)

vs.) Civil No. 732.

Kootenai County, et al.,)

The defendants' motion to dismiss the amended complaint was denied by the court.

(Title of Court and Cause.)
No. 732.

ANSWER TO AMENDED BILL
OF COMPLAINT.

Now come the defendants above named and for their answer to the amended bill of complaint herein, said defendants and each of them, admit, deny and allege as follows:

I.

Defendants admit each and every allegation contained in paragraphs I, II, III, IV, V, and VI of said amended bill of complaint.

II.

Answering paragraph VII thereof, defendants admit each and every allegation therein contained, except the allegation that the property above referred to constitutes the operating property of the plaintiff in the State of Idaho, and denies that the property described in said paragraph constitutes the operating property of said plaintiff in the State of Idaho, or is the whole of such operating property.

III.

Answering paragraph VIII thereof defendants, and each of them, state that they are without knowledge as to the facts alleged in said paragraph and for lack of knowledge deny that on and before the second Monday of July in the year 1918, or at any time, plaintiff prepared a list of all such operating property upon blanks supplied by the State Auditor of the State of Idaho, or otherwise, which list was subscribed and sworn to by the Secretary of the plaintiff or delivered to the State Auditor of the State of Idaho before the second Monday of July, 1918, or at any time, as prescribed by the statutes of the State of Idaho, or especially Section 89 and succeeding sections of Chapter 587 of the laws of 1913 now incorporated in the Compiled Laws of 1918 in Chapter 133 as Section 89 and succeeding sections, or otherwise, or that such list or any list truly set forth the information required by said statutes, or any statutes, or that the plaintiff stood ready at all times, or at any time, to give

any additional information which the State Board of Equalization of the State of Idaho might request of it.

Deny that in addition thereto the plaintiff did on or before the second Monday of July in the year 1918 furnish to the State Auditor as Secretary of the State Board of Equalization of the State of Idaho, or otherwise, a certified copy of the annual report of its Board of Directors or other officers, or any officers, to the stockholders, as provided by the laws of the State of Idaho and particularly Section 91 of Chapter 58 of the Laws of 1913 now incorporated in the Compiled Laws of Idaho of 1918 as Section 91 of Chapter 133, or otherwise, or as provided by any law or laws of the State of Idaho.

Deny that in the said report or any report furnished to the said Auditor of the State of Idaho, the plaintiff did furnish very complete and full information, or complete or full information, or any information, as to the character of the property of the plaintiff, or its capital stock, or its income or all or any other data relating to the affairs of the company provided for in said blanks and available, or otherwise, or that the same was full and detailed information, or any information as to the property, or value of the property, or business or income or expenditures of the plaintiff.

IV.

Defendants deny that the State Board of Equalization of the State of Idaho did not request or re-

quire the attendance of any officer, or manager or agent of the plaintiff, or make further inquiry of the plaintiff as to the value of any of its property in the State of Idaho, or that it made no request for any other or further information or facts than such as had already been furnished to it.

V.

Defendants deny that on the 14th day of August, 1918, or any time, or during the annual 1918 meeting of the State Board of Equalization of the State of Idaho, at the request of the plaintiff or otherwise, its counsel John P. Gray or its Auditor J. S. Simpson, appeared before the Board of Equalization on behalf of the plaintiff in relation to the assessment of the property of the plaintiff, or to the assessment of other property in the State of Idaho, or that at such hearing, or any hearing, in addition to the facts already presented by the plaintiff, or otherwise, its said counsel presented to or asked the consideration by the State Board of Equalization of the decision and judgment, or decision or judgment of the Public Utilities Commission of the State of Idaho in the case of Joseph H. Peterson, Attorney General v. The Washington Water Power Company, wherein the said commission had on the 3rd day of June, 1918, made and entered its judgment and opinion, or judgment or opinion valuing the property of the Washington Water Power Company in the State of Idaho, after an investigation by officers and engineers, or any

officer or engineer, of said Commission, or the taking of testimony or the investigation of the cost of reproduction, or other facts, or any fact or facts essential to an understanding of the value of the said property. Deny that said decision not only was presented to but was already in the possession of the said State Board of Equalization, or was at the time of said hearing considered by the said Board, or that the valuation of the said property of the Washington Water Power Company by the said Public Utilities Commission of the State of Idaho was made as of the 31st day of December, 1917.

Deny that the said suit above referred to of Joseph H. Peterson, Attorney General of the State of Idaho, against the Washington Water Power Company, was brought for the purpose, among other things, of having determined and fixed, or determined or fixed, the value of the property of the Washington Water Power Company in the State of Idaho, or that the said judgment and decision, or judgment or decision, was rendered only after an appraisement of the plaintiff's property by officers and engineers, or any officer or engineer of the said Public Utilities Commission of the State of Idaho.

Deny that between said 31st day of December, 1917, and the second Monday of January, 1918, there was no change in the value of said property.

VI.

Defendants deny that the said counsel of plaintiff called the attention of the said State Board of Equalization to the fact that it had been the practice in the State of Idaho by the assessors of the various counties not to assess property at its full cash value, or that the property of plaintiff should be assessed upon the same percentage basis of its value as was the property of individuals and others assessed by the assessors in the several counties of the State, or at that time called attention to the fact that farm property or other property was not assessed at a sum in excess of 50% of its full cash value. Defendants further deny that it was a fact that it had been the practice in the State of Idaho by the assessors in the various counties not to assess property at its full cash value, or that farm property or other property was not assessed at a sum in excess of 50% of its full cash value.

VII.

Defendants deny that the said State Board of Equalization in fixing the value of the property of plaintiff had no other evidence or facts before it, or that the members of the said Board did not hear or receive any other information concerning the value of the said property, except that referred to in the amended bill of complaint, to-wit, the said reports of the plaintiff and the said judgment and opinion of said Public Utilities Commission of the

State of Idaho, except a letter from Fred E. Wonacott, Assessor of Kootenai County, Idaho, a copy of which is attached to said amended bill of complaint.

Deny that in addition to the foregoing, the plaintiff did file one additional statement showing its revenues for the first six months of 1917 and the first six months of 1918 from the Coeur d'Alene Mining District in Idaho, or a list of Consumers disconnected or new accounts from January 12, 1917, to August 1, 1918, giving the consumer's name, maximum demand or annual revenue therefrom, or also showing the percentage of the gross income received by the plaintiff in Idaho or paid as taxes in said State.

VIII.

Defendants deny that according to the said judgment and decision, or judgment or decision, of the said Public Utilities Commission of the State of Idaho, the value of the operating property of the plaintiff in Idaho on the second Monday of January, 1917, was \$2,438,978. And in this connection defendants allege that according to the said judgment and decision of said Public Utilities Commission of the State of Idaho in the case referred to, the value of the operating property of the plaintiff in the State of Idaho, on December 31st, 1917, was the sum of \$3,800,000, and that such valuation did not include all the operating property of the plaintiff in Idaho at that time which was subject to tax-

ation under the laws of said State on the second Monday of January, 1918.

Defendants admit that in addition to the operating property of the plaintiff in the State of Idaho which was appraised and a value thereon fixed by the Public Utilities Commission of the State of Idaho, the plaintiff owned and operated on the second Monday of January, 1918, a distributing system in the city of St. Maries, Benewah County, Idaho, but are without knowledge as to whether or not said distributing system was appraised by said Public Utilities Commission of the State of Idaho, and therefore deny that said distributing system was not appraised by said Public Utilities Commission of the State of Idaho, or that the same was included in the assessment of the operating property of the plaintiff by the said State Board of Equalization. Defendants deny that the cost of reproduction new of the said distribution system at St. Maries was on the second Monday of January, 1918, the sum of \$43,097.00, or that its actual value at that time was \$31,461. Defendants deny that the total value of the operating property of the plaintiff in the State of Idaho on the second Monday of January, 1918, was not in excess of the sum of \$2,470,439, or that the cost of reproduction new of said property was not in excess of the sum of \$3,384,413. In this connection defendants allege that the total value of the operating property of the plaintiff in the State of Idaho on the second Mon-

day of January, 1918, which was subject to assessment and taxation on that date, was in excess of the sum of \$4,000,000, and that the cost of reproduction new of said property on that date was in excess of the sum of \$5,000,000.

Defendants deny that according to the statement filed by the plaintiff of the value of its property for assessment purposes in the State of Idaho, the value thereof was somewhat less than as found by the said Public Utilities Commission of the State of Idaho, and allege that according to such statement, the plaintiff claimed that the value of its property for assessment purposes in the State of Idaho was much less than as found by the said Public Utilities Commission.

IX.

Defendants admit that thereafter and on the 17th day of August, 1918, the said State Board of Equalization of the State of Idaho assessed the operating property of the plaintiff in the State of Idaho at the sum of \$2,750,000.

That included in the operating property of plaintiff so assessed by the State Board of Equalization in 1918 was certain property standing in the name of Idaho-Washington Light and Power Company; that the plaintiff owned all of the stock of said company and that the same had been used and operated as a part of the one system for some years last past and on the second Monday of January,

1918, was a part of the operating property of plaintiff in the State of Idaho.

Defendants deny that the assessment made of the said operating property of the plaintiff by the said State Board of Equalization of the State of Idaho subjects the plaintiff to taxes upon its property at a valuation in excess of the full cash value of said property on the second Monday of January, 1918.

X.

Defendants deny that the property of the plaintiff so assessed by the said State Board of Equalization is situated in several counties of the State of Idaho, to-wit, in the Counties of Kootenai, Shoshone, Bonner, Latah, Nez Perce, and Benewah, or is situated in various taxing districts within said counties, to-wit, school districts, road districts, cities or villages, and deny that any of the property of plaintiff was so assessed by the State Board of Equalization as alleged in said amended bill of complaint. Admit that the property of plaintiff which was assessed by the State Board of Equalization is situated in the several counties and taxing districts above mentioned, and that there was for the year 1918 levied in said various counties, in addition to state and county taxes, municipal, school district and road district taxes for the said different municipal corporations, and that it is all of these taxes, state, county, school, road and municipal which are involved in this controversy.

Defendants deny that as to all of said taxes, or any of said taxes, the said assessment of the plaintiff's operating property referred to in the amended bill of complaint, subjects the plaintiff to taxation in all of said several districts or municipalities or counties, or any of them, upon a valuation in excess of the full cash value of its property on the second Monday of Jauary, 1918.

Deny that in assessing the operating property of the plaintiff the said State Board of Equalization disregarded all or any of the evidence, or all or any of the facts before it with reference to the value of said property.

Deny that in the assessment of said property of plaintiff, the said Board adopted as a method after first pretending to determine the value thereof, or at any time, the taking of said value for the purposes of assessment at 100% of the full cash value of said property so found by the Board.

Deny that the said State Board of Equalization disregarded all or any of the evidence or facts or information before it or within its knowledge or possession, or within the knowledge or possession of any of the members thereof with reference to the value of the operating property of the plaintiff in the State of Idaho in fixing the valuation. Denies that then said Board adopted an improper or unjust or inequitable method in assessing plaintiff's property for taxation in taking 100% of its actual

cash value as found by the Board, or in taking any percentage over 50% of the full cash value as found by the said Board, and deny that the said Board did assess the plaintiff's operating property for taxation at 100% of its actual cash value, or did take any percentage over 50% of the full cash value of said operating property in making such assessment.

XI.

Defendants deny that for many years last past, or any year or years last past, or otherwise, including the taxing year 1918, or any other year, the taxes for which are here in controversy, the local assessors of the various counties in the State of Idaho assessed the property of individuals and of corporations, or of individuals or of corporations within their sphere of duty at less than 50% of the full cash value of their said property. Deny that for the year 1918 the said assessing officers habitually, or intentionally or systematically or generally throughout the State of Idaho assessed the property of individuals and of corporations, or of individuals or of corporations at less than 50% of the full cash value of said property, or that the assessors of the counties of Kootenai, or Shoshone, or Bonner, or Latah, or Nez Perce, or Benewah, or any of them, did so assess for the said year 1918 intentionally or systematically or generally or otherwise, the property of individuals or of corporations or of any one else within their sphere of duty at less than 50% of the

full cash value of said property, or at less than the full cash value of said property.

XII.

Defendants deny that it is a fact that the assessors of the State of Idaho for the year 1918, had an understanding, either express or implied, or in any manner, that the property to be assessed by them and within their sphere of duty should be assessed at 50% of its full cash value, or that such assessors did have any understanding in any manner that such property was to be assessed at any percentage less than its full cash value. Deny that the assessors in the State of Idaho and particularly in the counties where the property of the plaintiff is situated and subject to taxation and in the County of Kootenai, or that any of the assessors of the State of Idaho, or in any of the counties where the property of plaintiff is situated, or in the County of Kootenai, did assess the property of individuals and corporations, or individuals or corporations, or any of them, within their sphere of duty for said year at not to exceed 50% of the full cash value thereof on the second day of January, 1918, or that said assessors, or any of them, did assess any property for said year at less than its full cash value.

XIII.

Defendants deny that a large part or any part of the said property within the said counties or particularly a large part of the property in Kootenai County, or any part of said property, was assessed

at less than 50% of its full cash value, or at less than its full cash value.

XIV.

Defendants deny that the State Board of Equalization of the State of Idaho in office during the year 1918, being the same Board which assessed the operating property of the plaintiff for the year 1918, was, or that the members thereof were parties to or had knowledge of the understanding that the assessors of the State of Idaho should assess the property in their several counties, or within their sphere of duty at not to exceed 50% of the full cash value thereof, and deny that there was any such understanding.

XV.

Defendants deny that the said understanding that the property should be so assessed as not to exceed 50% of its full cash value, was had prior to the meeting of the said State Board of Equalization of the State of Idaho for the year 1918, or prior to the assessment of the plaintiff for said year by said Board, or that the said State Board of Equalization of the State of Idaho, or the members thereof, were parties to such understanding with the said assessors, or had knowledge thereof, or that the said understanding was had or entered into prior to the meeting of said Board, and deny that any such understanding was had or entered into at any time.

XVI.

Defendants deny that frequently or otherwise, throughout the meeting of said State Board of Equalization of the State of Idaho during the year 1918 at which the property of the plaintiff was assessed for said year, reference was made in open meeting to the understanding that the property assessed by the assessors of the State of Idaho should be assessed at not to exceed 50 per cent of its full cash value, and deny that there was any such understanding.

XVII.

Defendants deny that the fact of such systematic assessment upon this or substantially similar basis for many years last past has been a matter of public notoriety in the State of Idaho, or is within the actual knowledge of the State Board of Equalization, or was within its knowledge during its meeting of the year 1918 at which the property of the plaintiff was assessed, and deny that it was a fact that there was such systematic assessment upon this or substantially similar basis for many years last past, or any year or years last past.

XVIII.

Defendants deny that 75 per cent of the property of the State of Idaho is assessed by the county assessors, or that in the County of Kootenai, State of Idaho, during the year 1918, there was assessed by the assessor of said county property of an equalized valuation of \$11,595,837 out of a total valu-

tion in the county of \$18,396,436, and deny that the said property so assessed by the said assessor in Kootenai County, Idaho, amounting to \$11,595,837, or any other amount, was assessed or taxed for the year 1918 at not to exceed 50 per cent of its full cash value.

Deny that as a result of such methods of assessment referred to in the bill of complaint, or of any method or methods of assessment, 75 per cent of the property of the State of Idaho is required to pay state and county taxes, including school district, road district and municipal taxes, or any taxes, upon an average of not to exceed 50 per cent of its full cash value, or that the plaintiff by the action of the said State Board of Equalization of the State of Idaho is required to pay such taxes or any taxes upon its property in excess of its full and fair cash value instead of taking 50 per cent, the average rate applied by assessing officers to the vast body of property in the State of Idaho, and denies that 50 per cent is the average rate applied by assessing officers to the vast body of property, or any body of property, in the State of Idaho.

Denies that in Kootenai County, Idaho, the plaintiff is required to pay taxes upon its property at a valuation in excess of its full cash value, and that the vast body of property in said county is assessed or valued for taxation purposes at or required to pay taxes upon not to exceed 50 per cent of its full cash value, or that any property in said County is

assessed or valued for taxation purposes at or required to pay taxes upon not to exceed 50 per cent of its full cash value.

XIX.

Defendant denies that the said assessments referred to in the amended bill of complaint, by the said several county assessors at less than 50 per cent of the full cash value of the property assessed by them, or any assessments by any county assessors at less than 50 per cent of such full cash value, were permitted to stand, or were not changed by the said State Board of Equalization, and deny that as a result thereof for the year 1918 by far the greatest part of the property of the State of Idaho, or by far the greater part of the property in Kootenai County, or in the other counties in which the property of the plaintiff is situated was assessed for taxation purposes at less than 50 per cent of its full cash value, or less than its full cash value.

XX.

Defendants deny that the agricultural lands of the State of Idaho, and particular large amounts or any amounts of said lands upon which the State of Idaho has loaned money, situated throughout the State or in the County of Kootenai, or in the other counties where the property of the plaintiff is situated, and subject to taxation have been systematically or knowingly or generally or habitually assessed at far less than 50 per cent of their cash value, and denies that such alleged facts were

known to the said State Board of Equalization, or were disregarded by that Board at its said 1918 meeting in the equalization of the property of the state, or in the assessment of the property of the plaintiff.

Deny that the said agricultural lands or particularly the lands upon which loans have been made by the State of Idaho, or any lands were assessed at far less than 50 per cent of their full cash value for the year 1918 intentionally or knowingly, or habitually or generally by the said local assessors or any of them, or that said assessments were permitted to stand in 1918, or have been permitted to stand year after year by the said State Board of Equalization of the State of Idaho knowingly, or intentionally, or habitually, or generally or otherwise or at all, and deny that such lands or any lands were assessed at far less than their full cash value for the year 1918, or less than their full cash value.

XXI.

Defendants deny that the Board of County Commissioners of the County of Kootenai, meeting as a County Board of Equalization did not in any case raise any assessments for said year made by the assessor of said County of Kootenai, or that the only changes made by said Board in the assessment rolls for said year as returned by the assessor were in cases where petitions were made for a reduction by taxpayers or that for the said nine reductions no change was made in the assessment roll for said

year by the said County Commissioner acting as a Board of Equalization.

Deny that the said County Board of Equalization intentionally or systematically or generally permitted the assessment of the property of individuals and of corporations or of anyone else within said County and within their sphere of duty to stand or remain at not to exceed 50 per cent of the full cash value of said property or that except as to the reductions alleged in the amended bill of complaint that said Board did not change the said assessment roll as made up by the assessor or that the said Board did not in any instance raise the said assessed valuation of any property made by the said county assessor in the said county.

Deny that the County Board of Equalization in Kootenai County or the County Boards of Equalization in the other counties of the state have habitually or intentionally or systematically or generally throughout the State of Idaho, or did so intentionally or systematically or generally throughout the State in the year 1918 equalize for assessment purposes the property within their sphere of duty at not to exceed 50 per cent of the full cash value thereof. Deny that the said County Board of Equalization has during many years last past, or any years last past, or that it is a matter of general notoriety that it did in the year 1918 intentionally or systematically or generally permitted the

said assessment of the assessors referred to in the amended bill of complaint to stand.

XXII.

Defendants deny that in addition thereto all of the other property in the State of Idaho or any thereof subject to assessment, and within the sphere of duty of the local assessors to assess was assessed as alleged in the amended bill of complaint at not to exceed 50% of its full cash value, or that the said State Board of Equalization intentionally, generally or systematically permitted the said assessments to stand at not to exceed 50% of the value thereof, or that the said Board did assess the property of the plaintiff at more than its full cash value, or at its full cash value, or that by its said actions complained of, or any actions of the said State Board of Equalization did deny to the plaintiff the benefit of equalization to its great and irreparable damage, or any damage, or that by virtue of the said methods of assessment of the property of individuals and corporations within the sphere of the duty of the local assessors, and the equalization thereof by the State Board of Equalization, and the assessment of the property of the plaintiff as alleged in the amended bill of complaint, or otherwise, or by virtue of any method of assessment, or anything else the plaintiff has been deprived of its property without due process of law, or denied the equal protection of the law in violation of the Fourteenth Amendment of the

Constitution of the United States, or in violation of the Constitution of the State of Idaho, or in disregard of the laws of said State.

XXIII.

Defendants admit the allegations contained in paragraph XXIX of the amended bill of complaint.

XXIV.

Defendants admit the allegations contained in paragraph XXX of the amended bill of complaint, except the allegation that the method of assessment and distribution described therein is illegal and defendants deny that such method is illegal, or that the same result in taxing the plaintiff very much more, or any more, that it should be taxed or much more or any more for road or school or other purposes than the value of its property in the county should be required to bear.

XXV.

Defendants admit the allegation contained in paragraphs XXXII and XXXIII of the amended bill of complaint.

XXVI.

Defendants deny that the plaintiff has tendered the sum legally due upon its said property to the said tax collector. Deny that the plaintiff has been at all times, or at any time or is now ready and willing, or ready or willing to pay any or all legal or just taxes levied against the said plaintiff's property, or any of them, or to pay any or all

taxes justly or legally due upon its said property or upon any thereof.

XXVII.

Defendants deny that the said defendants wrongfully pretend that the plaintiff is indebted to the said Kootenai County for taxes to the amount of \$41,965.16, or that all of said taxes levied or demanded without warrant at law, save and except the sum of \$23,080.84, and deny that the defendants claim that the plaintiff is indebted on account of various penalties which the defendants have wrongfully attempted to attach or charge against plaintiff. In this connection defendants allege that the plaintiff is indebted to Kootenai County for taxes for the year 1918 in the amounts contained in the delinquency certificates set forth in paragraph XXXVI of the amended bill of complaint.

XXVIII.

Defendants admit the allegations of paragraph XXXVI of the amended bill of complaint, except the allegation that the delinquency certificate therein referred to is a pretended delinquency tax certificate, and deny that such delinquency certificate is a pretended delinquency tax certificate and allege that the same is a genuine and valid delinquency certificate, issued pursuant to the laws of the State of Idaho, for the amount of taxes and penalties justly due from the plaintiff for the taxes levied and assessed upon its property in said County for the year 1918.

XXIX.

Defendants deny that the said defendants or any of them hold out for sale to whomsoever will pay the same the said delinquency tax certificates, or that the said defendants also give out or threaten that if the property is not redeemed by the payment of said sum so demanded, together with the said penalties and additional penalties which the defendants pretend shall accrue thereon, or that they will three years from the date of the said pretended delinquency certificate through the defendant auditor or his successor in office, make to the defendant County of Kootenai, or to the holder of such delinquency certificate, a deed to the property of the plaintiff described in the certificate, pretended to convey plaintiff's property in the said County of Kootenai, or to whatever person may be the holder of such certificate.

XXX.

Defendant denies that the said pretended taxes are or will be an apparent lien upon the title of the property of said County of Kootenai, or upon the said property against which the same are pretended to have been assessed and levied or that the said pretended delinquency certificates is or will be, an apparent lien thereon. Deny that the same constitutes a cloud upon the title of plaintiff to its property in said County of Kootenai, or that should the said defendants issue any deed thereon the same would constitute a cloud upon

the title of the plaintiff to its said property, or work great wrong or injury to the plaintiff. Deny that for such wrongs or injury plaintiff will be put to great or unnecessary, or any damage or costs for which it can receive no compensation.

Deny that the said taxes or the said delinquency certificate or any deed which might be issued by the defendants or the successors of any thereof will impair or deteriorate the market value of the property of the plaintiff, or will interfere with the credit of the plaintiff.

In this connection defendants admit and allege that said taxes are a lien upon the title of the plaintiff to its property in Kootenai County, and that said delinquency certificate and the tax deed to be issued thereunder, if the same be not redeemed in three years from the date thereof, both will be a lien on such property.

Deny that plaintiff has no adequate or plain or speedy remedy at law, or any remedies whatever, save or except in equity. Deny that a large portion or any portion of said pretended taxes have been levied or are claimed by the defendants on account of payment of taxes levied by the State of Idaho, or that if such taxes should be paid plaintiff, such portion thereof would be by the said County paid to the State Treasury, or that plaintiff could not recover the same or any portion thereof in any action. Deny that a portion of any pretended taxes has been levied for school district or road district

or municipal purposes, or that if plaintiff should pay the same, such portion would be paid over and transferred to respective municipal corporations and districts, or that plaintiff would in order to recover such unlawful taxes so paid be compelled to bring separate suits against the said several road districts or road district or municipalities, or against Kootenai County, or that thereby plaintiff would be subjected to a multiplicity of suits.

Deny that the sale of said property or the clouding of the title thereto would or will constitute an interference with the plaintiff in the discharge of its public duties, or subject it to other actions or will subject it to great loss and damage, or any loss or damage on account of the impairment of its title or otherwise. Deny that plaintiff will be deprived of its property without due process of law, or that its property will be subjected to illegal liens or clouds.

WHEREFORE, defendants pray that the injunction prayed for by the plaintiff be denied; that the amended bill of complaint be dismissed; that the plaintiff be denied any of the relief prayed for and that the defendants recover their costs and disbursements herein expended.

BERT A. REED,
POTTS & WERNETTE,
*Attorneys and Solicitors
for Defendants.*

Endorsed, Filed July 7, 1919,

W. D. McReynolds, Clerk.
By L. M. Larson, Deputy.

At a stated term of the District Court of the United States for the District of Idaho, held at Coeur d'Alene, Idaho, on Thursday, December 18th, 1919, the following proceedings, among others, were had, to-wit:

Present:—

Hon. Frank S. Dietrich, Judge.

Washington Water Power Company)

vs.

)
) Civil Consol-
) idated No's.
) 732-733.

Kootenai County, et al.,)

Shoshone County, et al.,)

Upon stipulation of counsel, in open court, it was ordered that causes number 732 and 733 be consolidated for the purpose of trial.

(Title of Court and Cause.)

No. 732.

DECISION.

JOHN P. GRAY,

FRANK T. POST, and

W. F. McNAUGHTON,

Attorneys for Plaintiffs,

BERT A. REED and

POTTS & WERNETTE,

Attorneys for Defendants.

DIETRICH, DISTRICT JUDGE:

By this suit the plaintiff seeks to enjoin the collection of a portion of the taxes levied against its properties in the defendant county in the year 1918. The county and its collecting officers are made parties defendant.

It is well understood, of course, that courts of equity do not interfere with the collection of taxes merely because of an excessive assessment. The overvaluation must be the result of the adoption of a fundamentally erroneous principle or of a species of fraud practiced by the assessing officers; or, as it is sometimes put, the courts will interfere only in cases where there has been an intentional or systematic discrimination. *Chicago, etc., R. R. Co. v. Babcock*, 204 U. S. 585. *Greene v. Louisville & Interurban R. Co.*, 244 U. S. 499. *Greene v. Louisville & Nashville R. Co.* 244 U. S. 522. It will be noted that in drafting its complaint the plaintiff has recognized this limitation upon the power of the courts, and has expressly alleged that the assessing officers have intentionally and systematically discriminated against it.

By the bill the plaintiff represents that it is engaged in the business of generating and distributing electric current for power and lighting purposes, and that as a part of its system it has a hydro-electric plant near Post Falls in the defendant county, together with transmission lines and certain lands and easements essential to the main-

tenance and operation of the system; also a lighting system in the City of St. Maries, and transmission lines in other counties of Idaho. As a matter of fact, it also has large connecting plants and distributing systems in the State of Washington. It further represents that within the time prescribed by law it duly prepared a list of all such property held by it in the State of Idaho upon the second Monday of January, 1918 (the date designated by the statute for the assesment of all property), and delivered the same to the State Auditor. (Sec. 89, *et seq.* Idaho Session Laws 1913; Sec. 89, Chapter 133, Compiled Laws of Idaho, 1918). That it also furnished the State Auditor with other data and information and in every respect complied with the requirements of the law. That its counsel attended the annual meeting of the State Board of Equalization in August, 1918, and brought to the attention of the Board, among other things, the findings of the Public Utilities Commission, dated June 3, 1918, in a proceeding brought by the Attorney General against the plaintiff, involving the reasonableness of the rates it was charging, in which the Commission determined the value of all of the plaintiff's operating properties in Idaho as of December 31, 1917; that there was no change in its holdings or the value thereof between December 31, 1917, and the second Monday of January, 1918. That according to such findings of the Public Utilities Commission the value

of the plaintiff's operating properties in Idaho was \$2,438,978.00, to which is to be added \$31,461.00, the value of its lighting plant at St. Maries, which was not considered by the Commission. That the cost of reproduction new of such property was not to exceed \$3,384,413.00, and that the actual value on the second Monday of January was not in excess of \$2,470,439.00.

That on the 17th day of August, 1918, the State Board of Equalization, which is the body empowered by law to determine the value of such property for assessment purposes, fixed a valuation of \$2,750,000.00, which the plaintiff contends was in excess of the full cash value. That such property is situate in six counties of the State and in numerous taxing jurisdictions in each county, such as school districts, road districts, and cities and villages.

That in fixing such valuation the Board of Equalization not only disregarded the evidence of actual value, but also erred in not assessing the property at less than its full value, in view of the known fact that other property in the State was being assessed at not over fifty per cent of its actual value. In that connection it further represents that for many years prior to 1918 the county assessors habitually, intentionally, and systematically assessed the property within their jurisdiction throughout the entire state at not to exceed fifty per cent of its actual value, and that by a common under-

standing and pre-concerted arrangement they did so assess it in 1918 in all counties, including the defendant, and that the members of the State Board of Equalization had knowledge of and were parties to this understanding prior to the meeting in August, 1918, and that such common understanding and long-continued general practice were notorious. As a result, so it is charged, the plaintiff is required to pay in Kootenai County on a valuation in excess of the actual cash value of its property, whereas most other property in the county and in the state pays upon less than fifty per cent of the actual value.

That besides such general undervaluation, the county assessors for years have failed and refused, and in 1918 they again intentionally and systematically and generally failed and refused, to assess at all large amounts of property which under the law is subject to assessment.

That county boards of equalization will grant no relief, and that the State Board of Equalization generally and systematically has failed to raise the valuation so unlawfully made.

That after the valuation of plaintiff's property was determined in August, as already stated, the secretary of the State Board in due course certified to the defendant County Auditor such action, together with a description of the plaintiff's property, and that appropriate entries were made in the county records for the purpose of collecting

taxes levied upon the basis of such valuation, and in due time the assessment roll was delivered to the County Treasurer as required by law, and that thus such taxes became and are apparent liens of record upon the plaintiff's property.

That on December 30, 1918, within the time prescribed by law, plaintiff tendered to the County Treasurer, as tax collector, \$23,080.84, the same being fifty-five per cent of the entire aggregate claimed, and it still stands ready and is able to make payment of that amount. That the collector declined to accept the tender, but demanded payment of the full sum of \$41,965.16, together with penalties.

Further allegations are made to the point that the claim is wrongfully asserted against the plaintiff's property, and that it is without adequate remedy at law.

The answer puts in issue, formally or otherwise, most of these averments, but it need not be analyzed, for the nature and scope of the real controversy will appear upon a consideration of the evidence.

A motion raising objections to our jurisdiction, to the sufficiency of the bill, and touching parties defendant, has already been disposed of adversely to the defendants.

No serious question arises upon the meaning and scope of the state laws, and it will therefore be unnecessary to set them out in full. It is sufficient to

know that equality of taxation is a fundamental principle running through both the constitution and the statutes of the state; in the language of the constitution, "Every person or corporation shall pay a tax in proportion to the value of his, her, or its property." Article VII, Sec. 2.

With certain limited exceptions, all property is subject to taxation; only a few unimportant classes are exempt. All taxable property, save mines and possibly bank stock, is to be assessed at its "full cash value". Mining improvements also are to be taken at their full cash value, but a different basis is prescribed for the assessment of the claims and their mineral content. Bank stock is assessed at its par value less the value of real estate held by the bank, and the real estate, like other property, is to be separately assessed at its actual cash value. It is reasonable to suppose that while prescribing a different method for arriving at the value of bank property, the legislature really intended no distinction in ultimate results, but assumed that the value thus reached would be the actual cash value. In contemplation of law, therefore, the plaintiff stands upon the same footing with the farmer, the stock raiser, the merchant, and the owner of city real estate, and the tax upon its property should bear the same ratio to actual value as taxes upon farm lands, livestock, merchandise, and city lots; no distinction can lawfully be made.

Briefly as to the statutory procedure: Railroads and telegraph and telephone lines are assessed by the State Board of Equalization, consisting of the Governor and other State Officers. Any such system is treated as an indivisible unit, and the value thereof is distributed upon a mileage basis to the counties and other tax districts into which the lines extend. Power and lighting plants such as are here under consideration are also assessed by the State Board, and the value thereof distributed upon a mileage basis, but the value of the generating plants and other operating property is to be apportioned only to the county in which such property is located, and is to be distributed ratably to the mileage of transmission lines within such county. All other property is assessed by the county assessors of the several counties where the same is located, but the assessments are subject to modification by the county boards of equalization. As between counties and as to classes of property such valuations are further subject to change by the State Board of Equalization. Upon the basis of the valuation thus finally arrived at, levies are made in the counties and other tax districts by the duly constituted officers thereof, and after appropriate entries are made of both valuations and levies the assessment books or rolls are delivered to the several county treasurers, whose duty it is to make collections accordingly.

Manifestly the taxpayer is chiefly concerned with the inquiry whether the amount of the tax he is called upon to pay is in due proportion to the value of his property. It is really a matter of indifference to him whether his property has been valued by the local assessor or the State Board, or whether the valuation is low and the rate high or the valuation high and the rate low, provided always that the ratio between the value of property and the tax charged upon it is everywhere the same. The prime consideration to which all else is subordinate and incident is the constitutional guaranty that no one shall be required to pay in excess of his just proportion according to the value of his property. The inequality denounced by the constitution may be accomplished in either one of two ways. The complaining taxpayer's property may be properly assessed at its actual cash value and all other property upon a lower standard, or all other property may be assessed at its actual cash value and that of the complaining taxpayer upon a higher standard; the result is the same, and in either alternative the constitutional principle is violated. The gist of the plaintiff's complaint is the violation of this constitutional principle of equality. It charges not only that its property was overvalued, but that all other property was undervalued.

Upon the first proposition it is thought that the evidence is insufficient to sustain its position. Just what view the State Board entertained of the ac-

tual value of its property is left to inference if not to conjecture. The record discloses no reasons for assessing it at \$2,750,000.00, and little, if any, light can be drawn from the testimony or the surrounding circumstances. If, indulging the presumption of official regularity, we incline to the view that, mindful of the statutory requirement of full cash value, the Board did its duty and accordingly found such value to be \$2,750,000.00, we are met by the neutralizing consideration that if the Board knew that other property in the State was being taxed at only fifty per cent of its actual value, it was its duty so to assess plaintiff's property as to give effect to the constitutional guaranty of equality. *Greene v. Railroad*, 244 U. S. 499. Presumptions of official regularity are therefore of little weight.

The findings of the Public Utilities Commission to which references have already been made are in evidence. By these the defendants are willing to be bound, and they insist that under the circumstances these findings are also binding upon the plaintiff. It is pointed out that plaintiff brought the findings to the attention of the Board of Equalization while it had the assessment under consideration, and thus impliedly requested it to accept the conclusions embodied therein. While, therefore, we are without direct evidence of the mental operation of the Board, we have a case where at the time when it was about to take action one of the parties represented that it should follow the determination

of the Commission, and where the other party insists that such determination is correct, and hence impliedly concedes that the Board of Equalization should have accepted and did accept it. In view of these conditions and the further fact that the findings referred to were made by a body invested with the necessary jurisdiction, after an extended hearing in a proceeding the parties to which were the State, through its attorney general, and the defendant, we may reasonably conclude not only that such findings are correct, but that the Board of Equalization, which appears to have made no independent investigation, accepted them as the basis of the assessment. Accordingly it is held that upon the question of the actual value of plaintiff's property in Idaho the Board of Equalization adopted the finding of the Commission.

At the trial the views of counsel were greatly at variance as to just what this finding was. It is to be borne in mind that in its inquiry the Commission was primarily concerned with establishing a valuation not for taxation but for rate-making purposes. Recognizing the fact that the plaintiff's properties in Idaho and Washington were physically connected and inter-dependent, all constituting an indivisible unit, the Commissions of the two states cooperated in the hearing referred to, and, having first determined the value of the entire system, apportioned such value to the two jurisdictions. Of course the properties to be considered in establish-

ing rates for electrical service in Idaho are not necessarily identical with those which are subject to taxation in the State. The value of a hydro-electric plant just across the line in Washington, the entire output of which is transmitted for use in Idaho, would be an important factor in fixing reasonable rates for Idaho service, but such plant would be taxable not in Idaho but in Washington. So the ultimate finding of the Commission "that the present value of the used and useful property of the Washington Water Power Company on the 31st day of December, 1917, used in delivering electrical energy to the citizens of the State of Idaho is the sum of \$3,800,000.00" is irresponsive to the present inquiry. But in reaching this conclusion the Commission made other findings which are directly in point. It found that on December 31, 1917, the actual value of all the property of the plaintiff, "both tangible and intangible, used and useful, in the business of furnishing electrical energy," in both states, was \$20,500,000.00, and of this aggregate amount it finds, in table VII, the value of the property located in Idaho to be \$3,587,500.00. Undoubtedly these figures are to be taken as the Commission's findings of the value of the plaintiff's interests in this State. There is no special significance in the coincidence that there is a close correspondence between total actual cost as exhibited in an earlier table and the finding of present value. Allowance must be made for de-

preciation, it is true, but on the other hand, for appreciation also, where the facts warrant. The findings of the Commission are neither equivocal nor inconsistent. It is made clear that the ultimate conclusion of present worth is based exclusively upon no one of the several methods more or less commonly employed for reaching the value of such properties, and further, that the theory of reproduction cost insofar as it was used was not applied without making allowance for depreciation. But other compensating considerations were recognized. For example, water rights, upon which the Commission states it did not deem it necessary to place any specific separate value, but which were taken into consideration in arriving at the final value of the property in Idaho. So with "going concern value."

Upon the whole, it is thought the decision is so clear that the Board of Equalization must have understood, and did understand, that the value of that part of the plaintiff's property located in Idaho, and hence subject to taxation here, was found by the Commission to be \$3,587,500.00. Admittedly the consideration of the Commission did not extend to the St. Maries lighting system, the value of which the Board may have fairly estimated to be approximately \$33,000.00. Adding this to the \$3,587,500.00, we have a total of \$3,620,500.00 as the actual value of the plaintiff's taxable property in the State. It is thought that the Board of Equal-

ization so found the value to be, but made an assessment for only \$2,750,000.00. Accordingly it is held that the assessment complained of was, and by the State Board of Equalization was intended to be, upon a basis of seventy-five per cent of the actual cash value.

Turning now to the other branch of the inquiry. The evidence leaves no room for doubt that the plaintiff is right in its contention that most of the other property in the State was assessed at not to exceed fifty per cent of its actual value. It would of course be impracticable for a complaining taxpayer to produce direct evidence of the value of each specific item of taxable property in the State. The task would be endless and the expense prohibitive. Nor is that necessary. Deductions may safely and confidently be drawn from a reasonable number of typical and representative cases all pointing to the same end.

Briefly as to the proofs the plaintiff has adduced:—

Under the law state funds may be loaned on farm mortgages, but not in amounts exceeding one-third of the market value of the land exclusive of buildings thereon. Upon a search of the records of fifteen counties in different sections of the state plaintiff found recorded 151 loans of this character aggregating \$336,900.00. The aggregate appraised value of the mortgaged lands was \$860,193.00, but the assessed value of all these lands,

with improvements, including buildings, of course, was only \$324,892.00. It will be observed that while the loans are supposed to be for not in excess of one-third of the market value, they are slightly in excess of the total assessment, and that the assessment is scarcely forty per cent of the appraised value.

In Benewah County the plaintiff found 27 federal farm loans, in Bonner 143, and in Kootenai 213, a total of 383, aggregating \$622,605.00, upon lands the aggregate assessed valuation of which was only \$476,136.00. Upon the assumption of a fifty per cent loan basis the assessments are only about forty per cent of the actual value.

In six counties in different sections of the state 1591 private mortgages were found of record, aggregating \$5,054,445.00, upon lands assessed for the aggregate sum of \$3,232,069.00. Of these 380 were in Kootenai County, aggregating a total of \$540,761.00, on lands assessed at \$488,680.00. It is of course well known that generally mortgages are not placed for more than half the value of the mortgaged property.

In eight representative counties 1360 deeds were recorded the considerations named in which aggregated \$7,685,791.00, for lands which were assessed for the aggregate amount of \$2,763,364.00, or about 36 per cent of the sale price. Of these transfers 306 were in Kootenai County, and the assessment there was 41 per cent of the sale price.

It should be added that all of these mortgages and deeds were taken during a period necessarily reflecting a valuation as of date not far distant from the second Monday of January, 1918.

City lots and improvements thereon are not so susceptible to classification, and generalizations may not so safely be made of their value. But to say the least no one at all acquainted with the political history of the state would seriously contend that such property receives preferential treatment at the hands of assessing officers. Such evidence as the record contains upon the subject tends to show that if any distinction was made in 1918 it was not to the advantage of city property. In the defendant county the assessor for 1918 testified in effect that he aimed to assess all property in the county at fifty per cent, and that no discrimination between different classes of property was knowingly made. In rebuttal the defendant called one of his deputies, who had assessed a portion of Coeur d'Alene City, by far the largest City in the County. He stated that he aimed to assess at the full value, but upon being asked in conclusion whether in his best judgment he assessed the property at its "reasonable cash value," he replied, "Well, I did to the best of my judgment. I did the best I could, and I think—I didn't have any complaints." He further stated that the valuation of the lots was worked out in the office, and that he and his associates took as the starting point the intersection of

two certain streets in the business center, and all valuations were graduated downward from that point. In rebuttal the plaintiff produced as a witness a real estate agent who had been engaged in that business in the city for twelve years, and he estimated that the four corners at this intersection were actually of the value of \$190,000.00, that is, both lots and improvements. There was no contradiction of this testimony, but if we make a liberal allowance for the natural optimism of one engaged in the real estate business when called to testify as an expert upon valuation, it is rather difficult to adopt the view that property so located at what is admittedly the business center of a city, all occupied by business buildings, and so valued at \$190,000.00 was worth only \$78,500.00, which is the aggregate amount for which it was assessed; and admittedly the assessment upon these corners set the standard for all other property in the city.

When we turn to livestock assessments the record tells the same story. For sheep, cattle and hogs there is always an open market, and the actual cash value at any time may with confidence be closely estimated by reference to the current market reports.

Lumbering is an important industry in the defendant county, and while sawlogs constitute a comparatively small factor, their assessment is significant, because they are at all times marketable, and

hence their value, like that of livestock, is easily ascertained.

Much light is thrown upon the attitude of the assessing officers and their purpose and intent by reference to the proceedings taken at a meeting held by them at Boise in the latter part of December, 1917, in which the assessments to be made for the year 1918 were discussed and in a general way agreed upon. This meeting was attended by 37 of the 41 assessors, and also by some of the members of the State Board of Equalization, and was addressed by the chief executive of the State. A record was made of the proceedings of this meeting and the minutes were printed and distributed. The silence of the record is significance. At no time was there a suggestion that the law should be adhered to and property assessed at its actual cash value. It was formerly agreed that hogs should be assessed at six cents per pound, when it must have been known to all that at the very time they were worth more than twelve cents upon the open market. Common sheep it was agreed should be assessed at \$8.00 per head, and graded sheep at \$12.00, but the evidence shows beyond a possibility of a doubt that that was only approximately fifty per cent of their current market value. It was further agreed that cattle and horses be assessed the same as in 1917, and upon referring to the minutes of a similar meeting for that year we find that common cattle were assessed at \$30.00 per head and

milch cows at \$40.00; and as to horses the record is not very clear, but apparently all except pure-bred stock were valued at \$75.00 and less. The evidence shows conclusively that the assessment thus placed upon cattle was upon about the same basis as that of hogs and sheep, and while it is difficult to estimate horses by classes there is no reason to doubt that they were assessed proportionately to other livestock. It was further voted to assess merchandise, furniture and fixtures, machines, tractors, threshers, libraries, household goods, automobiles and stock, and lumber, "upon the same basis." In short it must have been known, and in fact it was clearly understood by all, that the specific values agreed upon for livestock were far below actual values, and it was agreed that all other property for which no definite figures were named should be assessed "upon the same basis" or proportionately. The witness Wonacott, at that time assessor in the defendant county, testified as follows, among other things:—

"Q. State what percentage, or upon what basis the property was assessed that year. A. Well, I think that fifty per cent—I tried to arrive at a fifty per cent basis on all property and assess it at that rate.

"Q. Will you state to His Honor the reasons therefor, and pursuant to what, if any, instructions or agreements, you made such assessment or caused it to be made. A. Well, prior to that time

there had been a great deal of criticism about the valuations placed on the property in Kootenai County by me, and I was considered a high valuation assessor, and I tried as near as I could to conform to the arrangements made at this meeting in 1917, and I made up my mind, from the figures that was placed on the livestock and other property that was considered at this meeting, that a fifty per cent basis was what the entire board and also the assessors were attempting to put through.

“Q. What assessors? A. All the assessors that was at this meeting.

“Q. Did you know yourself, or did you have occasion to make inquiry and ascertain, the market value of hogs in 1918, at the assessment time? A. Yes, sir.

“Q. And what was the value of hogs per pound at that time? A. It was something over \$15.00 a hundred, live weight.

“Q. And it is upon those resolutions and those facts that you issued those instructions and made that assessment, Mr. Wonacott? A. Yes, sir.”

This testimony is substantially corroborated by that of the then assessor of Shoshone County, as to everything except mining property and other property closely connected therewith; also by the witness Stewart, deputy assessor in Twin Falls County, and Hammond, who for several years was assessor of Fremont County and in 1918 was a member of the board of equalization of that county. Their

testimony is all to the effect that the aim was to assess property at about one-half of its actual value. By the record as a whole I am impelled to the conclusion that with the knowledge and acquiescence of some, if not all, of the members of the State Board of Equalization, the understanding was reached by the assessors at the Boise meeting that the assessments should be on a fifty per cent basis, and that generally that standard in fact was recognized in making the assessments. Wide departures there doubtless were in isolated cases, and both higher and lower valuations can be found, but such was the recognized rule. The record tends to show that in many instances, and in some counties generally, agricultural lands were assessed at a figure substantially below fifty per cent. If we assume that in many instances and in some localities quite generally certain classes of city property were assessed as high as 75 per cent, the fact still remains that generally the assessing officers recognize a standard of fifty per cent, and that with knowledge of that standard the State Board intentionally assessed the plaintiff's property on a basis of seventy-five per cent. The fact that officers either wilfully or inadvertently made exceptions to the rule they had improperly agreed upon, and that consequently some individuals in the classes to which such rule relates are the victims of inequality, does not bar this plaintiff from relief. If we consider only the assessments in the defendant county

(and those in other parts of the state are thought to be of only incidental importance) there is little difficulty. As already indicated, the assessor for the defendant county expressly testified that he adopted a fifty per cent basis, and gave his reasons for such a course. I cannot reject his testimony as being unworthy of credence merely because it is in direct conflict with the oath which under the law he was required to attach to his return. The circumstances are strongly corroborative, and if respect be had for his considerations of self-interest insofar as they are disclosed or may reasonably be surmised, it is highly improbable that he would give such testimony if it were untrue.

The final inquiry relates to the concrete relief that may properly be afforded. The considerations are so complex that we can hope to do not exact but only substantial justice. The total assessed value in the defendant county for the year 1918 was \$18,396,436.00. Of this total \$11,595,837.00 was assessed by the local assessor, and the balance of \$6,800,599.00 consists of valuations placed by the State Board of Equalization upon public utilities, including the property of the plaintiff. The evidence is not sufficient to warrant a finding that the State Board valued any of the utilities at fifty per cent, and the presumption will be indulged that its assessments were as to each other upon a basis of equality, and therefore that it put railroads, telegraph and telephone lines upon the same footing

with plaintiff's property. It further appears that bank stock was assessed in excess of fifty per cent of its actual cash value, and while in view of the low valuations placed upon bank real estate we cannot with confidence find upon just what basis bank property as a whole was actually assessed, substantial justice will be done by withdrawing it from the class of property locally assessed and including it with public utilities. The total assessment on bank stock was \$129,500.00. Making the necessary computation, we find that, including plaintiff's property, \$6,930,099.00 was on a seventy-five per cent basis, and \$11,466.337.00 upon a fifty per cent basis. As against the other property in the first class plainly the plaintiff's property is entitled to no relief, but as against the second class equality of treatment requires a thirty-three and one-third per cent reduction. The ratio of the two classes is approximately seven to twelve, or, in other words, plaintiff is entitled to a reduction of thirty-three and one-third per cent upon twelve-nineteenths of its assessment, or a total reduction of \$8,835.00. It has tendered and paid \$23,080.84. Hence there is still due the defendant county \$10,049.32, with penalties and interest thereon. Upon the payment of this amount the residue will be cancelled and the injunctive relief prayed for granted.

Endorsed, Filed Feb. 28, 1920,

W. D. McReynolds, Clerk.

(Title of Court and Cause.)
No. 733.

MEMORANDUM DECISION

Feb. 28, 1920.

John P. Gray, Frank T. Post and
W. F. McNaughton,

Attorneys for Plaintiff.

H. J. Hull and James A. Wayne,

Attorneys for Defendants.

DIETRICK, DISTRICT JUDGE:

In most of its salient features this case involves the identical issues in No. 732, Washington Water Power Company v. Kootenai County, both cases having been submitted together upon substantially the same record. Only distinctive features therefore are discussed. In the present case the plaintiff's tax is \$7,667.08 as against a tax of \$41,965.16 in the other case, whereas the total valuation in Shoshone County is \$31,828,649.00 as against a total valuation of only \$18,396,436.00 in Kootenai. Of the \$31,828,640.00, \$12,916,645.00 is on account of new profits of mines, which admittedly were assessed and taxed strictly in accordance with the statute; \$154,645.00 on account of mineral land acreage, which also is the valuation required by the statute; \$3,876,170.00 upon mine improvements, which, according to the testimony, were assessed at least their actual cash value; and \$374,103.00 upon bank stock, which, it is admitted, was assessed in compliance with the statutory requirement.

\$6,336,243.00 represents the assessments made by the State Board of Equalization upon public utilities, including the plaintiff's property. Therefore only \$8,150,834.00 represents local assessments, which are susceptible to criticism as being below the statutory standard of full cash value. Much of the property represented by this item was doubtless assessed for approximately fifty per cent of its value; but some of it—the record fails to disclose the amount—upon a higher basis, probably approaching seventy or seventy-five per cent.

Hence it is manifest that if, as we have expressly found in the other case, the plaintiff's property was assessed at seventy-five per cent of its actual value, the taxes demanded of it are not in excess of its fair share of the entire burden, for, as we have seen, the larger part of the assessment is strictly in accordance with or in excess of the statutory standard, while that of the plaintiff is twenty-five per cent below such standard and upon the same footing with the assessment of other public utilities. Without undertaking accurately to determine just what its proportion of the whole tax would be if all property were assessed strictly in accordance with the statute, obviously the amount would not be less than the demand of which it complains. It may be true that the method provided for the assessment of mines is inequitable, but the plaintiff does not question the validity of the statute prescribing

it, and it must therefore be accepted as controlling.

Accordingly the complaint will be dismissed.

Endcrsed, Filed Feb. 28, 1920,

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 732.

DECREE.

This cause came on to be heard at a previous stated term and was argued by counsel, and thereupon and upon consideration thereof,

IT IS ORDERED, ADJUDGED AND DECREED that inclusive of penalties and interest to the date hereof there is due from the plaintiff to the defendant county on account of taxes in said county for the year 1918 upon the plaintiff's property situated in Kootenai County, Idaho, and described in the complaint, a balance of \$12,431.20 (\$23,080.84 having heretofore been paid) of said sum of \$12,431.20, \$10,049.32 is the balance of taxes due and \$2381.88 penalty and interest; that the plaintiff shall pay and the defendant county shall receive and accept said balance with interest thereon from the date hereof at the rate of 7% per annum in full payment and satisfaction for said taxes and the said taxes shall thereupon be satisfied of record and the defendants and each of them and their successors be perpetually enjoined from selling the property of the plaintiff described in the bill of complaint for and on account of said taxes or in attempting in any manner to collect any further

sum of account of said taxes for the year 1918, and the certificate of sale for taxes of said year 1918, issued on January 27, 1919, be cancelled.

Each party shall pay its own costs herein.

Dated this 28th day of May, 1920.

FRANK S. DIETRICH,

Judge.

Endorsed, Filed May 28, 1920,

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

STATEMENT OF THE EVIDENCE.

The above entitled actions came regularly on for trial before Hon. Frank S. Dietrich, Judge of said Court, on the 18th day of December, 1919, at Coeur d'Alene, Idaho. Pursuant to a stipulation between the respective parties and the order of said Court, said actions were consolidated for trial, John P. Gray, F. T. Post and W. F. McNaughton appearing for the plaintiff, Messrs. Potts & Wernette and Bert A. Reed appearing for the defendants in said action wherein Kootenai County et al. are defendants, and Messrs. Jas. A. Wayne and H. J. Hull appearing for the defendants in said action wherein Shoshone County et al, are defendants. Thereupon the following proceedings were had and done and the following evidence and none other was introduced:

MR. POTTS: May it be stipulated that excep-

tions will be allowed to all adverse rulings during the progress of the trial?

THE COURT: Yes.

W. H. HERRICK, sworn on behalf of plaintiff testified:

ON DIRECT EXAMINATION.

My name is W. H. Herrick; I reside at Wallace, Idaho; I am assessor of Shoshone County and have been since 1913, and was performing the duties of that office in the year 1918. I attended two meetings of the Assessors of Idaho at Boise, one in December and one in the fore part of 1917. Plaintiff's Exhibits 1 and 2 are printed copies of the minutes of these two meetings and represent in substance the proceedings of the assessors at those meetings. It is a pretty hard question to answer Mr. Gray upon what percentage of the full cash value the property in Shoshone County was assessed in 1918. Shoshone County is a very peculiar county, different from any other county in the State of Idaho, on account of our mine taxation. I should have to say, leaving out of consideration mining taxation, that it was assessed on the full cash value as established by the State Board at Boise. I mean that everything would come within the same valuation basis as mine taxation. We put the full cash value, as established by the State. I wouldn't care to say what percentage it was. In a certain way it would be probably around 50% and in a certain other way it would be around 100%.

Q. I asked you, outside of mining property and mining improvements, what percentage of value did you take?

A. Well, it would run from fifty per cent. to over one hundred per cent.

Q. Didn't you state to me, (Mr. Gray) Mr. Herick, just a day or two ago here, that your assessment that year was on the basis of fifty per cent of the full cash value?

A. I did say that, Mr. Gray, but I would like to explain that. In Shoshone County the mines are taxed on a net profit basis for the reason that the life of a mine is uncertain.

THE COURT: That is the law, you mean?

WITNESS: Yes, that is the law.

(Continuing) At least we consider it that way, and for that reason we have to base other property surrounding the mines in the same class. I assessed property in some of the camps that played out, and it afterwards turned out that they were away over a hundred per cent. In assessing agricultural lands and business property, etc., I should have to admit that it was my effort to assess at near fifty per cent.

ON CROSS-EXAMINATION:

The only deputies I had in a great many years are just in a few isolated cases, where I couldn't get there. I have done most all the work myself. The total valuation of Shoshone County in the year 1913 was about thirty-two and three-quarter mil-

lion. I haven't the figures as to how much was the valuation upon public utilities assessed by the state board of equalization. I made out some figures for you, Mr. Wayne, if you have them. I made them out myself. The statement you hand me is the one I made for you, copied from the abstract of the rules in Wallace.

It was admitted that Mr. Herrick as assessor had nothing to do with the assessment of operating property of public utilities.

The net profits of mines are assessed by myself upon statements given by the operating mining companies. The mining improvements are assessed by myself, at a percentage the mining companies claim to be over one hundred per cent. It is all the value that I can get on them. I consider it more than they would sell for. It has been so for the year 1918 and all years. The mineral lands, that is fixed by statute. Bank stock is assessed at one hundred per cent. of its surplus and par value, in 1918. From the statement that I made, Defendant's Exhibit 1 all the remaining property that I have not already mentioned had an assessed valuation in 1918 of \$8,150,834.00. I assessed the merchandise the same as all property that I assessed, some would be on a full invoice and some would be on less invoice, according to the condition of the business and the character of the merchandise.

Q. But it was your attempt to assess at full cash value?

A. Not always, no.

Q. How did you differ? What difference did you make on different stocks?

A. Where it was old merchandise, merchandise that wasn't moving, a business that was in poor condition, it would vary from a live business and a live stock.

Q. That is, you didn't accept the invoice price as full cash value?

A. No.

Q. What would you say as to whether or not you assessed these stocks of merchandise at what you considered their full cash value at the time irrespective of the invoice?

A. I did.

ON RE-DIRECT EXAMINATION:

I assessed the mining improvements at over one hundred per cent. because I considered the state law assessing the underground value of mines, allowed the mines too much easement on taxation. By fixing the full cash value according to the state board of equalization I meant that I didn't consider that the state board of equalization interpreted the law, full cash value, at one hundred per cent. I thought they interpreted that anywhere from fifty to seventy-five per cent.

The minutes of the meetings of the assessors offered in evidence, being Plaintiff's Exhibits 1 and 2.

In 1918 bank stock was assessed according to

par value and the surplus and undivided profits added.

ON RE-CROSS EXAMINATION:

These minutes which I have identified, one purports to have been held in January, 1917, and one in December, 1917, I attended all meetings for the last six years, there was no meeting of the assessors in 1918. That was December, 1917, to govern the work of 1918. The one of December, 1917, took the place of a 1918 meeting. I was present at the meeting. I wouldn't care to say whether I might have been absent from a session of the meeting, Mr. Potts. The meeting covered three days. I think there was one or two evening sessions, if I am not mistaken. I don't recall whether I was present at each session, whether I missed any or not. I have read what purports to be the minutes of each of these sessions through several times the last couple of years; I have not recently read it. I wouldn't care to say that it is word for word a correct report of what transpired at those meetings. The minutes were read over at each meeting for the previous meeting, approved and printed as approved. I might have been present and I might not, I couldn't say. I wouldn't testify that I didn't miss a meeting. The meetings of the assessors are held annually for the sake of assisting the assessors to do their work and get together on the same basis, classifications and so forth, to assess different classes of property upon certain bases that are

agreed upon at that meeting. These minutes are printed and copies sent to the various assessors. We sometimes refer to them during the time we are assessing the property. I read them through and to a certain extent I had in mind the resolutions and actions of the assessors during the period I was assessing.

THE COURT: Who causes these documents to be printed?

A. The Governor calls a meeting of the assessors, and the assessors have a secretary and chairman, and the minutes of the meeting are printed.

THE COURT: That is by some understanding among the assessors?

A. Sometimes the assessors pay for it. Generally the printing is a compliment to those who have it printed.

THE COURT: And by a common understanding these printed copies, that is, one at least, is sent to each assessor?

A. Yes.

Q. And you say you have read these through?

A. Oh yes.

THE COURT: And they are in accord with your knowledge and understanding as to what occurred?

A. Unless typographical errors—

THE COURT: Well, in substance they are the same?

A. In substance the same, yes.

THE COURT: And as assessor you have assumed the correctness of them and acted upon that assumption?

A. Oh yes. You are not absolutely bound by anything in that, you know.

THE COURT: No, but I mean you have assumed the correctness of them?

A. Yes.

Plaintiff's Exhibits 1 and 2 received in evidence.

THE COURT: I want to ask a question. I understood you to say finally, in answer to a question put to you by Mr. Gray, in substance, that you must concede that you told him that as to property other than mining property you put a valuation upon it of approximately fifty per cent?

A. Some of it, yes; a great deal of it.

Q. Well, some classes of property as distinct from other classes?

A. Well, it will vary in localities, judge. We may have a town with a mine in it, that I know is about on its last legs, about to play out.

Q. But take farm lands and business property, for instance, such as is in Wallace, a substantial town or city, what do you do there?

A. The valuation will run from fifty to seventy-five per cent of its sale value.

Q. In other words, all property that you regarded as of a permanent or stated character you undertook to assess it at from fifty to seventy-five

per cent of what you regarded as its cash value?

A. Yes, sir.

MR. GRAY: Q. And substantially all of it at fifty per cent?

A. No; I assessed more stuff at over fifty per cent than I did under it, Mr. Gray.

ON RE-CROSS EXAMINATION:

Q. Mr. Herrick, in saying that you assessed it at from fifty to seventy-five per cent of its value, you include in that statement only this some eight million dollars of valuation?

A. Yes.

Q. The rest was either assessed under some state statute, by the State Board of Equalization, or at the full one hundred per cent?

A. Yes, or more.

I spoke of some of these towns that were about worked out, such as Wardner and Murray and parts of Mullan are in the same condition. We often find that we have assessed property at over one hundred per cent. In the time between the assessing and the tax paying the property will have dropped from a fair value to almost nothing, and that property is included in this eight million, and the stock of merchandise. Part of the merchandise is assessed at the full one hundred per cent of its invoice.

Q. Have you any way, Mr. Herrick, of segregating from this eight million dollars of valuation what was assessed for one hundred per cent and what

was not?

A. Oh no; no, I haven't. That would take a very fine segregation, to get that, and would take a great deal of work. I simply made that list from our county abstract.

Q. In assessing this property in 1918 did you adopt any uniform basis or proportion of what you considered the cash value, as a basis for the assessment? I mean, of course, of property generally?

A. Nothing that would carry a set rule.

S. C. STEWART, sworn on behalf of plaintiff, testified:

ON DIRECT EXAMINATION:

My name is S. C. Stewart; I reside at Twin Falls, and am Deputy Assessor, a position I have held since January, 1917, and held that position during the year 1918; I have lived in Twin Falls since the fall of 1911 and am generally familiar with the property in that county and its value during these years, and assisted with the assessment in the year 1918; and during the year 1918 was in the office of the assessor. My work in general was assessing outside; I assessed the city of Twin Falls, and some of the other towns, and some of the farm lands, some of the livestock, had practically all the outlying districts to assess in our county.

In the assessment made by me for the year 1918 approximately fifty per cent of the full cash value was the ratio of assessment. That was practically

our basis, on which I assessed.

Q. Did you have any instruction from or understanding with the assessor or other deputies as to the basis of assessment?

A. Yes.

The understanding was oral; the understanding was that there was practically a fixed value to be placed upon certain stock, and we would assess other properties in about the same proportion.

Q. What was that understanding or fixed price for stock, if you remember?

A. Well, in assessing livestock, for instance, we assessed sheep at \$8.00 a head.

At that time the market value, the cash market value of good grade sheep in our section of the country was \$15.00 to \$17.00.

THE COURT: Well, was that your understanding of the value?

A. Yes, sir.

That was the basis upon which I assessed that property and other property. I also assessed cattle and hogs, and in assessing I made inquiry as to the value, the information I gathered from farmers, and so forth, in assessing, and we assessed milk cows at \$40.00, and common cattle at \$30.00. It was my understanding at that time that milk cows were selling at from \$80.00 to \$100.00, and common cattle at \$60.00 to \$70.00. I also assessed some hogs in that country on the basis of \$6.00 per hundred. At that time I couldn't say that I

was familiar with the value of hogs.

ON CROSS EXAMINATION:

George W. Wilcox was the assessor of Twin Falls County in 1918; I was appointed by him as his deputy and worked under him; I couldn't say that I received written instructions as to how I should make my assessments in that county from Mr. Wilcox the assessor. There were some certain instructions written and given to the different deputies. I don't know that they bore particularly on the basis of the valuation.

No, I have not seen anything like this, and didn't get anything like that instrument you hand me, and I did not receive written instructions in that general form from the assessor of that county to govern me in making my assessment of property during the year 1918.

Mr. Wilcox, the assessor of Twin Falls County, did not tell me before he sent me out or before I started to assess property in that county, to assess any or all classes of property at any fixed percentage of its cash value, and when I assessed the city of Twin Falls I was not instructed by Mr. Wilcox, the assessor, to assess the lots and buildings or other property in the city at any fixed percentage of what I found to be the cash value of the property, and was not instructed by the assessor to assess any property assessed by me at any fixed or certain percentage of its cash value as found by me.

Q. Mr. Stewart, when you assessed the city

property in Twin Falls how did you proceed to make the assessment?

A. Well, our lot valuations in 1918 were let stand just as they had been equalized the year before. We run practically the same values on city property as we had for the year 1917; there had been no changes whatever to speak of, with very few exceptions. These valuations were placed by the assessor and we took those from the 1917 roll. When I started out I had a plat book showing the assessment value of each piece of property for the prior year and was guided by those former values, and I made changes, lowering or raising, where in my judgment I considered it necessary. Occasionally something would be called to my attention that would convince me that it was necessary to make a change to better equalize the values. If I saw a piece of property that in my judgment I thought was out of proportion, I equalized it as near as I could, according to my own judgment. It was my attempt to equalize it with other property that I was assessing, basing it on the knowledge that I had of the value of other property.

I also had the value of the improvements on the statement or plat I took with me, and make changes in that, raising or lowering the values after looking at the property, it being my purpose, in raising or lowering the assessment to equalize it with other property, as best I could.

Q. Did you raise or lower these values in the

effort to reach any percentage of the full cash value?

A. No, I couldn't say it was to arrive at any definite per cent of the actual cash value.

I did not assess any bank stock in Twin Falls county; I know how it was assessed.

Q. How was it assessed in 1918?

A. The capital stock, surplus and undivided profits assessed at full—

MR. GRAY: Assessed under a separate statute, Your Honor.

I do not know what the value of bank stock was in Twin Falls County, with reference to the assessment as made.

I assessed stocks of merchandise in 1918, in the city of Twin Falls and other towns; I assessed them on their invoice, on a basis of practically seventy per cent of invoice, and in the majority of cases in addition to that we made allowances for dead stock or shop worn goods, which, of course, would reduce that somewhat. I followed the method of taking seventy per cent of the inventory price in arriving at my valuation of the stock; and in the majority of those stocks there would then be some deductions in case a merchant could show us where he had dead stock on hand, or shop worn goods, or some thing of that kind. We made allowances in those cases, deductions where there was some special circumstances of that kind; that reduced the value of the goods, in my judgment.

I testified in regard to the market value of livestock in 1918, during the assessing season, the spring of 1918, we having our assessing done along in June, before July 1st.

As to how I got my idea of the value of these different kinds of live stock, I happened to have some sheep which I sold that spring myself. The values of sheep, cattle, hogs and livestock generally, fluctuate, from time to time.

Q. The fact that they are worth so much in the spring of 1918, doesn't indicate that they are worth that much in January of that year, or at any other time during the year, does it? It is a fluctuating value, depending upon the market conditions?

A. To quite an extent, yes. I don't know that values were any higher at that particular time than they were at other times.

Q. Well you don't know that they were any lower either, do you?

A. Well, just at that time, in that particular line of stock, as I say, I disposed of some sheep myself.

Q. Well, I am not interested alone in sheep, but in livestock generally your knowledge, aside from these sheep that you had yourself, your knowledge as to market prices is just a general understanding, isn't it—no definite knowledge of your own?

A. Not any more than just what I gathered from the people in regard to these values as I was assessing.

Q. Did you make the statutory affidavit after the assessment was completed, that you had assessed property, among other things, at its full cash value, to the best of your judgment?

A. I made that affidavit in connection with the rolls, yes, sir.

In 1918, there were five other deputy assessors besides myself that assessed property in Twin Falls county, and the assessor also actually assessed some property in the county that year. I couldn't say what proportion of the property of Twin Falls County I personally assessed. I had the bulk of the city work, and I had quite a portion of the close-in district to Twin Falls, farm lands and I had practically all the outlying districts. No, I don't think there was any other one deputy that put in the same time I did making assessments in the field; did not put in as much time as I did; I presume I assessed one-fourth of the property of Twin Falls County that was assessed by the assessor's office.

ON RE-DIRECT EXAMINATION:

I was chief deputy assessor in Twin Falls County that year, and as such had occasion to check over the other assessments made by the other deputies and compared them with my assessments.

Q. Did you know of the value of other property which was assessed by the other deputy assessors?

A. Well, their livestock assessments were the same as those which I had made, generally.

As to this livestock, as a basis of that assessment, we were guided by the minutes of the meeting as the assessments agreed upon by the assessors at their meeting in 1917. They are the minutes, Exhibits 1 and 2, and copies of them were in the possession of our office and of us deputies.

As to farm lands which I assessed and the ratio of the value at which they were assessed, we as near as possible assessed on the same proportion as we assessed stock and other classes of—not to exceed fifty per cent.

ON RE-CROSS EXAMINATION:

The assessments upon farm lands did not include the assessment on the improvements, the assessment on improvements being separate; I assessed farm lands myself immediately adjoining Twin Falls; I assessed just a small portion of the farm lands, didn't have a very large territory, probably a township or two.

No, I wouldn't say that we did as a matter of fact in Twin Falls County assess our farm lands at much less than fifty per cent,—about twenty or twenty-five per cent and we did not assess irrigated land there, with a market price, a well known value of from two to three hundred dollars an acre at forty or fifty dollars an acre.

Q. Isn't it a fact that your assessment of certain parts of your irrigated lands there was out of all proportion to the assessment of other property in that county?

A. Well, I wouldn't say that it was out of proportion with other property. No. Some of our values there in my judgment are inflated to quite an extent.

Q. I will ask in the first instance, if during the spring of 1918 particularly, there was not a very brisk demand for livestock in Twin Falls County?

A. Well, I wouldn't say that the demand was any keener in 1918 than it had been in 1917. There was an extra good demand in both of those years.

Q. And it caused the price of stock locally to increase, is that not a fact?

A. Possibly so.

I arrived at the basis on which I assessed property in Twin Falls County, I got the idea from the fact that the assessments had practically been fixed by the assessors on other classes of property, which was practically fifty per cent. By that I mean and refer to live stock that the assessors fixed the values on, and we planned to assess other property on about the same basis.

Q. That is the reason that you proceeded to make the assessment in that way? You had no other reason for doing so?

A. Well, in order to give everyone an equitable assessment in different lines of property which we assessed, we couldn't do otherwise.

Q. Well, I want to get this clear now, if I can. Just exactly what caused you,—whether you had

to make the assessment in this way,—did you have any specific instructions from your principal, the assessor, to follow any uniform percentage in assessing the property?

A. Not any more than to try and assess all lines of property on practically the same basis.

I got this idea of not assessing real estate to exceed fifty per cent, from my conception of the percentage of the assessment of livestock, yes, sir. We tried to assess all lines of property on practically the same basis.

F. C. LYNCH, sworn on behalf of plaintiff, testified as follows:

My name is F. C. Lynch. I reside at Twin Falls, Idaho, and am Deputy Auditor and Recorder, and have held that position since July, 1918, and have lived in Twin Falls during the same period.

Q. During the year 1918 did you have any acquaintance with any farm property or other property and its value, in that county?

A. Well, through being deputy recorder, and writing the instruments up, in the reception book, I came in contact daily with the market value of property, yes sir. That is, the prices at which it was being bought and sold; and I assisted in preparing the abstract for Twin Falls County for the year 1918, for the State Board. The State Board of Equalization did not make any change in the assessment in that county in the year 1918; I have a

correct copy of that abstract here, a correct copy made by me from the original and have compared it with the original.

The document was marked Plaintiff's Exhibit 3 and offered in evidence.

MR. POTTS: This is only a part of the abstract. Do you expect to offer the other part?

MR. GRAY: Oh no; that is the entire abstract.

WITNESS: That is not an exact copy.

MR. GRAY: This is the real property assessment roll. That is what I wanted to offer it for.

WITNESS: I have not the personal property abstract.

MR. GRAY: I then offer this.

WITNESS: That is only a small item compared to this one.

MR. POTTS: Well, I would like to ask the witness one question in that regard.

Q. The amount of personal property on this real property assessment roll is a very small item compared to the amount of personal property on the personal property assessment roll, isn't it?

A. Yes, sir.

Q. And this assessment roll does not show but a very small part of the assessment on personal property in Twin Falls County?

A. On personal property, yes.

MR. POTTS: As far as the real property is concerned, I think we have no objection.

DIRECT EXAMINATION (Continued)

Q. Based upon your familiarity with the prices for which real property was being bought and sold in Twin Falls County in 1918, what was the basis, what proportion of that value was represented by that assessed value?

THE COURT: In other words, it would only be a circumstance. He isn't professing to testify to the market value of the property. It is only the value as shown by the deeds and transfers as they went through his hands.

A. I would say it run between forty and sixty per cent of the actual valuation.

MR. POTTS: I move that the answer be stricken out, as too general and indefinite.

THE COURT: Yes. You mean forty to sixty per cent of the average valuation as stated in the instruments of transfer?

A. Yes, sir.

I have, Mr. Gray, at your request, prepared a list of conveyances and mortgages recorded in Twin Falls County, in the year 1918, and have upon the same tabulation gone to the assessment rolls of that county and placed opposite each description not alone the amount of the mortgage and the consideration shown, but also the assessed valuation of that tract of land for the year 1918.

MR. GRAY: I would like to have this one large exhibit marked, and then I will refer to the pages in it by pages.

Said exhibit marked Plaintiff's Exhibit No. 4.

WITNESS: I would say that the tabulation included within the pages 118 to 140 is a copy of the transcript that I made. As to how I made that, I went through all the deeds, got hold of those, and then went back to the assessment roll and checked the same property up on the assessment roll, to arrive at the assessed valuation. On this, take one page, page 125, the first columns are the description, the second the section, and the third the township, and the fourth the range, and the fifth the mortgage made upon the property, and the sixth the assessed value of the same property, and the assessed value of the improvements in the last column.

THE COURT: That is in case of mortgages and not of sales?

A. I believe there are some sales in there too. The sales or transfers were handled in practically the same manner, outside of, instead of the mortgage it was the consideration, named in the instrument of conveyance. There is also a column showing revenue stamps and the revenue stamps upon all of those conveyances were put on. They do not appear opposite each description, some of them haven't revenue stamps—the law didn't take effect until the latter part of 1917. No, I can't say that I did compile in these mortgages and in these transfers all of the transfers and mortgages that I found upon those books; I just went through them as they came for four or five deed books and mort-

gages for the year 1918, and each one that I found in there was put upon my transfer. I don't think that included all of the deed books and mortgage books for the year but so far as it did include mortgage books and deed books I put them all in; they were not picked out, I just went from page to page, and I would say that this is a copy of the one which I made.

MR. GRAY: I desire to offer those pages in evidence.

MR. POTTS: I wish to interrogate the witness in regard to the preparation of this tabulation:

Q. What period of time did you cover in preparing this tabulation?

A. Well, there was no certain period of time covered. Those instruments were filed during the year 1918, and recorded. I went back towards the first of the year and picked out three or four mortgage books and three or four deed books and went through them as they came. Yes, I think I commenced my tabulating in January, 1918. I referred in my direct examination to some of the instruments that didn't bear revenue stamps because the revenue law hadn't gone into effect, being those that were filed in the year 1918 that possibly were dated previous to that; instruments which were dated in 1917, but filed in 1918.

In selecting these books, referring to the transfers, the conveyances,—not mortgages, but deeds, from which I made my tabulation, I just ran down,

not at random, but I would run along consecutively; they were all numbered; would take a deed book in which the deeds were recorded; I did not take all of the deed books for the year 1918; I don't remember exactly, there were six or eight deed books I had in which deeds were recorded during the year 1918 and I went through nearly all of those books in getting these transfers. No, I guess I didn't take all the conveyances in nearly all of them. Probably,— I took those that were effected in the year 1918; I mean that they were sold during the year 1918, transferred. Yes, I have a number there without revenue stamps that I took and those didn't indicate sales in the year 1918.

Q. Well, what was your method of determining the others, what others you should take?

A. Well, I had no exact method. I just went through the books and took off the considerations here and there. I didn't pick out any special ones that were valued more than the others, or anything like that, but I picked them out here and there, and took some of them consecutively, not all of them.

Q. The greater part of them you didn't take consecutively?

A. No, sir.

In reference to the tabulation regarding mortgages, I took them in the same way. I did not do all this work myself, I had my wife for several nights to assist me, and another girl; I had the tabulation of the deeds at that time, when I got

her to help me, that is, the consideration, and the mortgages, and I would take the assessment roll and call off to her the assessed valuation and the value of improvements, and she would put them down opposite the consideration. This was on a preliminary tabulation, before it was typewritten. I did not check that back. I couldn't say as to who took the amount of revenue stamps on each conveyance, the deeds, and put it on the list; I don't know whether I or one of my assistants did, and I did not myself check the revenue stamps back. I prepared this tabulation, last July or August some time, at the request of the Washington Water Power Company, doing it individually, after working hours; I was compensated by the Washington Water Power Company for doing it and it was not a part of my official duties in any way. I can not tell what proportion of the deeds which were filed for record and recorded in Twin Falls County during the year 1918 were taken by me and included in this tabulation of deeds, and I can not tell what proportion of the mortgages were taken and included.

At this time counsel for the defendants objected to the reception in evidence of pages 118 to 140 of Plaintiff's Exhibit 4.

THE COURT: I think, perhaps, gentlemen, the only course to pursue at the present time would be for me to receive this offer subject to the objections. I may say to you, however, that I enter-

tain very grave doubt as to its competency and very much more doubt as to the weight it should have, even if received, under the testimony of the witness as to the manner in which it is made up. * * * * *

I shall let it go in under the objection, and determine later whether or not it will be considered at all.

WITNESS, Mr. Lynch, withdrawn temporarily.

E. S. CRANE, sworn on behalf of plaintiff, testified as follows:

My name is E. S. Crane; I reside at Coeur d'Alene; my business is right of way agent for the Washington Water Power Co. I have been in the employ of the Washington Water Power Company about fourteen years. I did have something to do with making up the list of lands which has been shown in pages 118 to 140, inclusive, in Exhibit 4, the Twin Falls County lands. When I went to Twin Falls I employed Mr. Lynch, who was deputy auditor at that time, to assist us, expecting to take them myself. We worked part of two days and one night, and I put down all the names which I have in my writing here in my copy, Mr. Wonnacott and I; some of this is in Mr. Wonnacott's writing and some in mine, showing Mr. Lynch where to put the assessed value on. He supplied us with the books and was there helping us at that time, but we put down the considerations and omitted the lots in the sheets. We got in one or two by mis-

take, and sometimes they would be skipped, but each leaf in each book was taken over and examined. If it was agricultural land, we took it. Our instructions were to omit city property,—to take agricultural land.

These transfers and mortgages were taken from October 17, 1917, to January 1, 1919.

Q. You made a list in your handwriting and Mr. Wonnacott's at that time, did you, or two lists?

A. Yes. One of mortgages and the other of transfers and they are the original lists that I have here. After I made them I left them with Mr. Lynch to take the assessed value, and that row of figures there of Mr. Lynch's, that is under assessed value and improvements. Then I took a carbon copy, after this had been printed from the book, a carbon copy, and gave it to Mr. Lynch and instructed him to check it back, which he told me he has.

MR. GRAY: I would like to offer in evidence, the original lists made by Mr. Crane and Mr. Wonnacott.

Papers offered were marked PLAINTIFF'S EXHIBITS 5 and 6.

Plaintiff's Exhibits 5 and 6 include every transfer in Twin Falls County within that period, and every mortgage recorded, except upon town lots; it includes all agricultural property.

Plaintiff's Exhibit 7 is a carbon copy of the data in the book there, Twin Falls mortgages and

deeds, transfers. It is the one I referred to as having given to Mr. Lynch. Taking up the deeds and transfers, the first five pages are in Mr. Wonacott's handwriting, pages six to ten inclusive are in my handwriting; pages eleven to fourteen, inclusive, are in Mr. Wonacott's; page fifteen my handwriting; pages sixteen to nineteen, inclusive, in Mr. Wonacott's handwriting.

I got the consideration which is mentioned there off of the book of deeds, by starting in with October 17th and turning each leaf over and examining the records. If it was a town lot we omitted it and went on to another page. There was some there weren't any revenue stamps on, but where there were revenue stamps we placed the amount of stamps as shown on the deeds.

Taking the mortgages, they are in the following handwriting, page 1, Crane's; pages two to nine, inclusive, Wonacott's; pages 10 to 12, inclusive, Crane's; first four or five lines page 13 in Crane's and balance Wonacott's; pages fourteen and fifteen, Wonacott's; pages sixteen and seventeen, Crane's; pages eighteen, nineteen and twenty, Wonacott's.

Mr. Wonacott, Mr. Lynch and I were present together while we were doing this work.

Q. Did you correctly and accurately place on there the names, descriptions and considerations, and revenue stamps, in the transfers?

A. Not all the names, some of them. We took the description and the consideration. It was getting late and we—In the mortgages we placed the descriptions of the property and the amount of the mortgages.

ON CROSS EXAMINATION:

Mr. Wonacott and I wrote down the data contained in these various pages; I wrote part of it and Mr. Wonacott part of it; I had nothing to do with the part written by him and he had nothing to do with the part written by me; I had one book and he had the other, and both Mr. Wonacott and I were employees of the Washington Water Power Company at that time. As to the books I examined, some of the books are there, Mr. Potts, and some of them I don't think we put on there. I think you will see the starting was about October, there—some record of it some place.

Q. What books in the County Recorder's office did you examine to get this data from?

A. I can tell you some of them if I had the data there.

Q. Tell me some of them generally.

A. The books of deeds and the book of mortgages, but the numbers I have forgotten. I took the books of deeds in which the instruments were recorded at length, starting from the 17th of October, 1917, and then Mr. Lynch gave us each book following that, that we went through. We took one book commencing in October, 1917, and took all of

the transfers, except the city property which we omitted; and I examined each description.

Q. And you tell us that you took every conveyance in each book when you went through it, except what appeared to be a conveyance of city property?

A. Yes, with the exception where one would be a dollar and no revenue stamps, that would be all, we omitted that one.

Q. You omitted many conveyances in which the consideration did not appear otherwise than nominal, didn't you?

A. There weren't many of them,—very few.

This Plaintiff's Exhibit 6 represents the deeds, transfers, that I took. This page I have turned to is in my handwriting. It contains no names of grantor or grantee, we took no names of grantor or grantee; I took the consideration expressed in the deed and that is all I put down there on that page.

Q. In connection with any transfer?

A. Oh no, I have some transfers with the page, —or in that other exhibit; I don't know which one. I took all of the revenue stamps, where I could find them, all that I could see.

Q. Did you make an effort to find the revenue stamps?

A. I think you will find some there some place.

Q. You will find very few there, will you not, Mr. Crane?

A. Yes, very few. There are very few down there, too.

Q. * * * Are these in any other, these pages?

A. No.

Q. No order at all, just as you happened to write them out and he happened to write them out?

A. Mr. Lynch would give us a book apiece, starting from that period we asked him, and I couldn't say whether mine was the second book or the first one, I don't remember. After I had written this data down on these sheets of paper I left them with Mr. Lynch, to finish up the assessment roll.

Q. Did he have anything to do with the preparation of this data?

A. Oh, yes, he was,—well, I don't know,—he was kind of an overseer; I would ask his assistance quite often. After I had gone through and put down my figures here, description and consideration, I didn't make any further check, at any time. I caused this typewritten statement which has been identified as pages 118 to 140, of Plaintiff's Exhibit 4, to be made from this memoranda after Mr. Lynch had completed it. He didn't complete it while I was there. He sent it to me I think at Spokane. He added the figures for assessment, valuations on here and sent these two exhibits to me and then I had the typewritten exhibits made.

MR POTTS: We object to the introduction in evidence of Plaintiff's Exhibits 5 and 6, on the

grounds heretofore urged in opposition to Plaintiff's Exhibit 4, pages 118 to 140, inclusive.

THE COURT: I think I shall sustain the objection for the present.

WITNESS: I have checked those against the typewritten copy, and the typewritten copy is correct, as shown upon those exhibits.

FRED E. WONACOTT, sworn on behalf of plaintiff, testified as follows:

My name is Fred E. Wonacott; I reside at Coeur d'Alene, Idaho; I accompanied Mr. Crane to Twin Falls to make a transcript of mortgages and transfers and at that time was in the employ of the Washington Water Power Company. When I reached Twin Falls, with reference to taking off and transfers or mortgages, we went to the Auditor's office, Auditor and Recorder's office, and asked permission to see the books, the records of mortgages and deeds or transfers, between the dates of October 1, 1917, and January 1, 1919, and they furnished us the county records, the records of those books, and Mr. Crane and I,—I took one book and he took another. We both worked on separate books, and we took them from between those dates, substantially every transfer and every mortgage, except those town lots, which I believe we were instructed not to take, the town lots. I think we got everything that was included in those—that we were instructed to get, that is, all farm lands any-

way, and I think everything except the town lots. With reference to deeds, which showed only a consideration of one dollar, or a nominal consideration, and had a revenue stamp of not to exceed fifty cents, I don't think we took those because we didn't think—that is, I am pretty sure I didn't. But I took all of them where the consideration was more than a nominal consideration or the stamp was more than fifty cents. I have looked at Exhibit 6 just recently, the pages, and they are in my handwriting. They correctly show all of the transfers to which I have referred in my testimony, and were shown on those books; and I accurately transcribed that. The same is true of Exhibit 5, which contains the mortgages; I think I took everything, took all the mortgages; at least all of the mortgages of farm lands, between those dates.

ON CROSS EXAMINATION:

In checking this data we was there together in the office; On what I put down there I took that alone.

Q. And in your statement that you got substantially all of the conveyances, just exactly what did you mean?

A. Well, I did a lot of this work for the company, and I know in some of the counties there was deeds for—

Q. We are discussing Twin Falls County now.

A. I know, but as far as my memory is concerned, I think we got all, but I was going to say

that in some counties there was cemetery lots or something of that kind that was recorded; those instruments I didn't take. But all farm lands, and I believe everything but city lots, in Twin Falls County. That is my recollection of it, and I am positive of it. In going through a book I didn't skip anything. We just took page by page. We took everything that was in the nature of a transfer, that showed the consideration of a dollar, that is, of over a,—where it had a revenue stamp, for instance, of one dollar even, I took those, for the reason that the dollar would represent more than a \$500.00 consideration, and even if the consideration was only a dollar, I took that deed where the stamp was one dollar; but where it was only fifty cents, and then only a dollar consideration, I didn't take that, because it didn't represent anything, anything more than it might have represented a dollar consideration.

Q. That was your opinion of the matter, and for that reason you didn't take them.

A. Well, that was the fact.

Q. And you omitted a good many of those, did you?

A. Well, I omitted those in that way, and took everything else. I omitted those that had only a dollar consideration and no revenue stamps at all. I don't know whether Mr. Lynch or the auditor furnished me the books from which I took my data. We went to the Auditor's office, and I think we had ac-

cess to the books, if I mistake not. I think we could go right into the vault and get the—

Q. Do you know how many of the deed books during the period you have testified to were gone through by you?

A. I think we took them all.

Q. Well, do you know that you took them all?

A. Yes, sir, I do. I took the books which had a standard form of deed, what is known as the county form and went through those, and went through those that had a special form, where they were written up with a typewriter, we took them all, I think, in Twin Falls County, everything.

F. C. LYNCH, being recalled, testified as follows:

DIRECT EXAMINATION:

No, Mr. Gray, I did not put any of the writing upon those exhibits 5 and 6, and none of it is in my handwriting; the assessed valuations, some of them is in my wife's handwriting, and some of it, a couple of other girls I had there.

Q. Do those include the transfers and mortgages, the assessed value of the land included within which you examined and either your wife or one of the girls transcribed upon the exhibits?

A. Yes, sir. I looked all that stuff up in the assessment rolls and gave it to my assistant, and the assistant would write it down. Mr. Crane gave me this Exhibit 7 a week ago Monday or Tuesday

at Twin Falls, and I have kept it ever since. I took that and went through the different mortgage books and got the description and consideration, and checked it with the description and consideration as shown on here. I did not do this with reference to the assessed valuation; In the assessed valuation as it is shown here, I called it off from a book and the assistant wrote it down upon the paper; I have checked these others over and they are correct; mortgages and deeds both, that are included in this Exhibit 7.

On CROSS EXAMINATION:

No, I did not personally prepare those pages about which I testified this morning. I think I said that I had help at the time.

Q. All that you had to do with the preparation of these pages about which you testified this morning was having them delivered to you and checking a portion of them, as I understand it now?

A. No. I assisted Mr. Wonacott and Mr. Crane. In fact, Mr. Crane gave me the job when he came over there, of handling this.

Q. Had you forgotten about having the assistance of Mr. Wonacott and Mr. Crane, when you testified this morning?

A. I had not.

Q. The fact now is that Mr. Wonacott and Mr. Crane did all that work of preparing that data except putting in the assessed valuations, is it?

A. Yes. And the assessed valuations were put

in by my wife and two young ladies.

Q. And just what did you have to do with that?

A. Well, I had the job.

Q. Well, but you collected the money, is that it?

A. I got the money. But as far as actual work is concerned, I did not do any of it, not as far as these records are concerned. I did not do any actual work in preparing any part of those records. I didn't write down any of the figures on these documents, but I did furnish some of the information to those who wrote them down. In that connection I assisted Mr. Wonacott and Mr. Crane in several questions that came up, that they asked me about; I did not go through the deed book with them and give them any assistance in any instance.

Q. How did you assist them?

A. Well, they would come in and ask me if all the deeds were in this book, or if they were recorded in different books. I didn't get all of the deed books during the period, and I didn't furnish them all of the deed books.

Q. When it came to the addition of the assessed valuations on those lists that they had reported, did you go through the assessment rolls yourself and get those assessed valuations?

A. I did, by having the girl call off the description and hunting it up in the assessment roll and reading off the valuation and the value of the improvements. I looked up the valuation as compared

to the description of the property. I took the description of the property and found it in the assessment book and I myself looked up the assessed valuation, and gave it to someone else to write down; I did all of that work myself, I looked up all the assessed valuations.

Q. And after they were written down or after the lists were thus completed, you did not make any check-back to see whether they were accurate or correct or not, did you?

A. Not of the original list, no, sir. I did, a week ago, check back this list here, the carbon copy, checked the consideration stated in the conveyance, and the description. I did not check the assessed valuations.

MR. POTTS: Well, we object to the introduction of these exhibits on all of the grounds urged against the introduction of pages 118 to 140 inclusive of Exhibit 4, and on the further ground that they have not been sufficiently identified, or their accuracy and correctness sufficiently shown to warrant their introduction.

THE COURT: Overruled.

M. H. HAMMOND, sworn on behalf of plaintiff, testified as follows:

DIRECT EXAMINATION:

My name is M. M. Hammond; I reside at St. Anthony, Idaho; my business is that of a farmer; I have lived in St Anthony, in Fremont County,

twenty-seven years; In 1918 I was County Commissioner of Fremont County; I was assessor in that county in 1901 and 1902, and 1912 and 1913; I am tolerably familiar with the property, farm lands and other property in that county; I was tolerably familiar with the value of farm lands in Fremont County, in 1918, in January of that year, the second Monday of January; I was not very familiar with the value of hogs and sheep in Fremont County at that time; was tolerably familiar with the value of cattle; the market value of common cattle at that time in Fremont County was, I think, from fifty to sixty or sixty-five dollars. I was familiar in January, with the value of farm lands in most parts of the county at that time. I was county commissioner during 1918 and had occasion to examine the assessment roll and assessed value of property that year, I acted on it.

Q. What was the proportion of the value at which property was assessed in Fremont County that year?

MR. GRAY: Farm lands.

MR. POTTS: I object, on the ground that the witness is not qualified to answer, hasn't shown sufficient familiarity with values throughout the county to entitle him to answer the questions.

THE COURT: Overruled.

A. Well, I would say now about fifty per cent. on an average.

I have made a transcript of mortgages and con-

veyances and assessed values of lands in Fremont County covering a period from October, 1917, to January 1, 1919.

Document is marked PLAINTIFF'S EXHIBIT 8.

Plaintiff's Exhibit 8 is copies of deeds of record in Fremont County, Idaho, from October, 1917, to January, 1919; it included all farm lands, that is, this is a copy of all of the regular or straight deeds. I didn't hunt up those that had a special contract, scattered through different books. I included in Exhibit 8 all of those regular deeds, and showed the consideration which they purported to show and any revenue stamps thereon; there are some few that didn't show any revenue stamps, and those I left blank; this was taken page by page, and I filled in the column, "Assessed Value," getting my information off of the assessor's rolls, and copied that myself, it is all my own work. And here I show the pages that have town lots on, or deeds prior to 1917, I give the page and show what they were and omit the description and consideration.

MR. GRAY: Now, I would like to offer that in evidence.

MR. POTTS: We have the same objection to that as to the former offer.

CROSS EXAMINATION:

I took a copy of all the regular deeds, those in regular form, the county form, the printed deed books. It was all in one. It would commence at page one and run right through to the end of that

book. Of course, the special deeds, those that had contracts in or some special clause, that was copied in some other book, I didn't take those. I am quite familiar with the records of that county. It is a fact that the county has printed certain deed books, to correspond with the county form of deed and when deeds are filed for record according to that form, they are recorded in that printed deed book, and those are the ones I took. I didn't take any that came in in some other form.

Q. Did you examine those special books, the books which contained the special form of deeds?

A. I just looked through, I think, one of them. I think during that period there were two deed records that had some of this special form in. During that period there was just one of the regular county form books, just the one. It just happened to commence on page one, on October 5, 1917, and run clear through the book.

RE-DIRECT EXAMINATION:

No, sir, there were not a great many of their special form deeds. I could hardly say about how many there were, but there wasn't so very many. I didn't count them; I couldn't say just what. These two books I spoke of were not full of these other special form of deeds.

Q. Well, these special form deeds, are they put in a miscellaneous record, is that the idea?

A. Yes. Just written on a typewriter.

MR. POTTS: I don't think the witness means

that they are put in a miscellaneous record. They were put in a different form of deed book.

WITNESS: Some of them I think went into miscellaneous. Still, I may be mistaken on that, but they are in a typewritten book. Anyway, I took all in the regular form, every one.

THE COURT: The objection will be overruled.

A certain paper was marked PLAINTIFF'S EXHIBIT NO. 9.

WITNESS: Plaintiff's Exhibit No. 9 is a copy, made by me, of the mortgages in Fremont County, giving the name of the mortgagor and of the mortgagee and the assessment. That was all done by me from the various records in the office of the Recorder and the Assessor. That covers a period of time from October, 1917, to January 1, 1919. I did not take all of the mortgages. I took the mortgages in six books, commencing at number—the numbers are given here and the page of the mortgage. I took every page in those six books. I didn't take the others because I thought this would give a good average per cent, and I didn't think it was necessary to take any further.

Q. Did you make any selection between books, or when you started a book, did you take everything in it?

A. I took everything in it.

MR. GRAY: I offer that in evidence.

CROSS-EXAMINATION:

Q. What six books did you select?

A. I commenced with No. 14, and took them as they came along, fourteen, and they run along up to twenty-six. I took six altogether. I don't know whether I omitted any between those numbers. I couldn't say how many books there were from October, 1917, until January 1, 1919. I didn't examine them. I didn't go through all of them. Those that I took I took everything there was in them.

Q. Do you know what proportion the books you took bore to all the books during that period, for mortgages?

A. Well I took the main part of them. I know I asked the Auditor to give me a list of the books of mortgages, and I took them and went through. No, there weren't as many as a dozen mortgage records used during that period. Yes, I know from the list that the deputy gave me that there was only some seven, probably eight, eight or nine.

Q. Some seven or eight or nine?

A. Yes.

Q. Possibly ten or eleven?

A. No, I don't think there was that many.

Q. You didn't examine the records sufficiently so that you can tell us, did you, Mr. Hammond?

A. Well, I am satisfied there wasn't. I got six of the main records and took every instrument from those six books, of that date, from October, 1917, to January, 1919. I think when I first started I took the town lots, but after I had taken a book or two

I omitted those. I put the assessed valuations on these. There are a number here that have no assessed valuation. That is a new part of the county, where the lands have been proved up on after the previous year's assessment, and they proved up and mortgaged it. Proof hadn't been made on it for 1918, I took this off in July.

Counsel for defendants objected to the introduction of the exhibit.

THE COURT: Overruled.

C. E. ARNEY, sworn on behalf of plaintiff, testified as follows:

DIRECT EXAMINATION:

My name is C. E. Arney, residence, Spokane. I am with the Northern Pacific Railroad Company, in the agricultural department. In the year 1918 I was in the same class of work, with the title at that time of Western Immigration Industrial Agent. I was present at a meeting of the State Board of Equalization of the State of Idaho, in Boise, in 1918, and attended all the public sessions of that board.

Q. Mr. Arney did you make any memoranda of proceedings at that meeting, and statements that were made during the course of the meeting?

A. Yes, in detail after the 14th. My notes were not complete,—I think the Board sat on the 11th, but beginning with the 14th I did. The reason I happened to be in Boise at this meeting at

that time is I have attended all the meetings of the Board for five or six years. I am attached to the tax department of the Northern Pacific Railroad.

That memoranda at that meeting was made in my handwriting at the time. I have had transcribed, under my direction, a portion of the proceedings there, occurring at different times during the meeting.

Q. With reference to the reduction of any valuations by the Board, was anything said by any member of the Board, a memorandum of which you made at the time? By the Governor, a member of the Board, in the presence of the other members?

MR. POTTS: To that we object as incompetent, irrelevant and immaterial, and not binding upon us, and not binding upon the Board of Equalization.

THE COURT: You may answer.

A. Yes.

Q. State in substance what it was, and you may use any notes or memoranda in refreshing your recollection.

A. "This is a poor time to talk about a reduction in valuation," said Governor Alexander, speaking to Tax Agent Evans, who appeared before the Board. "So far as I am personally concerned, it will have no influence. If anything, I am for revision upwards; my eyes are toward Heaven rather than earth. I wish to be perfectly frank about the matter. Under the present condition, with high rates on everything, the State should

not be asked to reduce valuations.” And later during Mr. Evans’ argument, the Governor said: “My ideas are fixed. I would not discuss the matter of equalizing property to the extent of lowering railways.” And again: “If you talk to me about lowering this year I would not consider it; I think railway property should be assessed either at present value or higher.” And again: “I think it is a poor time to talk about reduction when currency is inflated and hog meat is so high—not that I eat any.” During Mr. Murray’s argument the Governor said: “We are not governed by the valuation of property, but by the needs of the State of Idaho.” Later when talking about Field Agent Wheeler’s report on the Northern Pacific Railroad, and its recommendation to reduce the assessment on the Fort Sherman and Coeur d’Alene branches, the Governor said: “I saw that report. I will not pay any attention to that. We did not send him out to decrease values, but to increase them.”

At another time when Mr. Sproat was talking he, (Mr. Sproat) commented that the assessors had agreed in convention that sheep should be assessed on a sixty per cent basis. Mr. Sproat is, I believe, president of the Wool Growers’ Association, or some sheep association. The Governor answered: “This board instructed them to do so.”

When Mr. Kersted was speaking for the Idaho Power Company, the Governor commented: “Look how near we assessed this property last year with-

out any of these figures. That's what we assess railways—fifty per cent.”

On August 22nd, when Mr. Capps was speaking for the Ashton & St. Anthony Power Company, Governor Alexander said: “We are assessing other property, Mr. Capps, at fifty per cent, and we are assessing you at about twenty cents on the dollar. In fact, all property ought to be assessed higher than that.”

On the 15th of August, when Mr. Hall, of the Pacific Telephone Company, made reference to a regulation of the Interstate Commerce Commission, the Governor said: “We don't have to be bound in the State of Idaho by anything.” “We never receive anything from the Interstate Commerce Commission to bind us.”

Discussing the assessment on the Idaho, Washington & Northern Railway, the Governor said, on the 15th: “It ain't worth it but we got to punish them some way.”

When discussing Lincoln County Land assessed at \$30.00 per acre, the Governor said: “We loan money on your land at \$50.00 per acre, and these railroad representatives come in here and shove these figures before us.” That was on the 16th.

On the 16th the Attorney General said, referring to these same lands: “And your lands there are selling at \$200.00 per acre.” The Governor said: “And any of it is worth \$100.00 an acre. You

ought to have your land raised about forty per cent."

On the 16th again, the Governor talking: "The State Land Board never refused a loan on forty acres at \$2000.00 to \$2400.00. Your land has cheap water and no interest on deferred payments for water." The assessor, Shad, of Blaine County, said: "At our meeting the Governor agreed that we overlook much personal property and machinery in our assessment this year, owing to the shortage of farm labor." This referred to the assessors' meeting, which was under discussion at the time.

When they were discussing the Utah Power & Light Company, on the 17th, the Auditor and the Governor referred to a tentative agreement made last year not to make any big raises, and the Governor said: "I made that agreement as M. Alexander, not as Governor."

When the Blaine County assessment was being discussed, attention was called to exemptions. Auditor Van Dusen said, on the 17th: "It was agreed by all assessors and this Board last January that household goods and jewelry should be exempt." The Ada County Assessor, Mr. Kincaid, said, "When we find a man with \$400 or \$500 household goods we do not assess him; when it is \$1200 to \$1500 we do."

The Auditor said: "That was our gentleman's agreement of last January."

The Ada County Assessor said: "They are all to be exempt. We had better wire the Blaine County assessor and see that he does as we agreed." This was after discussion over the Blaine County Assessor not having kept the agreement.

When Latah County was being discussed, the Governor said: "Shirts worth \$3.50 a dozen last year are \$11.55 now and still merchandise is only increased ten per cent in Latah County. Much merchandise has increased three hundred per cent in the stores."

On the 19th the Governor said to Mr. Knox, chairman of the Board of County Commissioners of Gem County: "Do you not think the assessment on dry-farm land at \$13.00 is nearer thirty-three and a third of the actual value than fifty per cent? Twenty-nine thousand acres irrigated land—fine fruit land, at \$41.38 per acre; that land is worth \$150.00 per acre."

That was referring to the irrigated land in Gem County, around Emmett.

When Jess Hawley was speaking for the Pullman Company, Governor Alexander said: "The very fact that we are an equalization board takes us out of the scope of the law." This was on the 19th. Mr. Hawley replied: "Yes, but you must act within the law." After Jess Hawley had given some quotations, Governor Alexander said: "That's made for the Attorney General, not for me."

On the 19th, speaking of Cassia County, the

Treasurer, Mr. Eagleson said, that it was only assessed at about forty per cent of its value. The Governor then said: "Land in Minidoka and Lincoln Counties should be raised thirty per cent." And the Governor moved to increase Gooding County land ten per cent, saying, "That would be forty per cent."

On the 23rd, to Colonel Heigho, representing the Pacific & Idaho Northern Railway, the Governor said: "We have got to get taxes out of someone and if we can't get it from you we should get it from the Oregon Short Line. We are here to devise some way to run a state government and not levy a tax too high on the poor dry-farmer."

On the 24th, when the subject of the assessment of the Milwaukee Power Company was under discussion, the Auditor, Mr. Van Dusen, said: "If we should assess them at \$60,000 the Court might say we had exceeded the percentage at which we assess other property."

To which Attorney General Walters replied: "As long as we use our judgment, we are a Court unto ourselves. Unless the court was convinced that there was fraud that would have nothing to do, although we might assess some at a hundred per cent and some at five per cent."

When these statements were made, it was in the regular meeting of the Board with the Board members present.

Q. Was exception taken to any of those state-

ments by any member of the Board?

A. No, only as I have read, colloquies, as the last, between Van Dusen and Walters.

MR. POTTS: We move that all of the testimony of this witness with reference to statements made by the Governor and other persons appearing before the Board of Equalization or present at those times, be stricken, on the ground that it is irrelevant and immaterial and incompetent and not binding on any of the defendants.

THE COURT: I think I shall let it stand. The objection is overruled.

CROSS EXAMINATION:

Q. Mr. Arney, did you attempt to take notes of everything that happened before the meeting about which you have testified?

A. Beginning on the 14th, yes.

Q. Did you make verbatim reports of every statement that was made there?

A. Everything that I have read, beginning with Mr. Sproat's testimony. The preceding ones I have not the original notes of.

Q. That is not the question. The question is, while you were there in attendance at a session of the board, did you take down everything that was said?

A. No, sir—only such things as I thought bore on the peculiarity of the mental calibre of the Board.

Q. And particularly of Governor Alexander?

A. No, that is not correct.

I was there as a representative of the Northern Pacific Railroad Company, expecting to contest our taxes, and I was interested in the assessment of the Northern Pacific Railroad Company by the State Board of Equalization, at that meeting, and I took down and made notes of those things which I thought I might afterwards be able to use in contesting that assessment, such as I thought would be germane to a legal contest of our taxes and I took down nothing else, made notes of nothing else. I did make a great many other notes; I made notes of valuations fixed by them.

Q. But your notes all went to the matter of getting available data for your use in contesting the Northern Pacific assessment?

A. Yes, and this is but an epitome, a very small part of the notes that I took.

Q. Is that a verbatim report so far as it goes, and do you claim that you took down word for word what Governor Alexander said in that connection?

A. Everything I read after the beginning of Mr. Sproat's—I think I can clear this other, by referring to my original package. Here it is.

Q. Do you claim that this first paragraph is word for word what Governor Alexander said?

A. No, but after this I do; beginning with Mr. Sproat's testimony, I do, and you will find marginal notations of my notes as I took them here.

Down to a point of Mr. Sproat's, it is substance, Mr. Potts. Beyond that it is verbatim. What I have testified to before that part reading "At another time, when Mr. Sproat was talking"—that is merely the substance of what I heard; I did not take it down at that time, no, sir, reduced it afterwards.

Commencing with this part referring to a time when Mr. Sproat was talking, I did at that time, while the Board was in session, and while these remarks were being made, take this down verbatim, as I have testified to it here. I did not take it in shorthand. I wrote it in longhand, abbreviated partly.

Q. And you wish us to understand that you were able in longhand and by abbreviations to take down everything that Governor Alexander said there while he was speaking on these different subjects?

A. Such as I have copies there, yes, sir.

Q. You sat there in the board room and when something was said that particularly struck your attention, that you thought would be a benefit to you, you wrote it down?

A. Yes.

..

Q. And that was but a small part of what transpired there was it not?

A. Oh, there was a great deal of language that I didn't get.

Q. And a great deal of it that you didn't want, wasn't there?

A. A great deal.

Q. Now, in the course of these statements and in the course of those meetings which you attended, at which you heard these statements, you heard Governor Alexander make other statements to the effect that corporate property, the property of public utilities and railroads was assessed at as low as from twenty to thirty per cent on the dollar, didn't you?

A. No, sir.

Q. And he insisted that corporate property or the property of public utilities and railroads was assessed much less than it ought to be, didn't he?

A. No, I don't think he did. I don't think he made any such statement. In one place he referred to, that he would vote—this was right at the beginning of the meeting,—Mr. Evans was the first man to speak, Mr. Evans of the Short Line, and before he had spoken three minutes he made this first statement substantially as I have read it to you, that if he should be a party to making any change in the 1917 assessment of railroads, it would be upward and not downward.

No, he did not contend that the railroads were assessed too low, not generally. I didn't hear any such statement made by him except as I recorded it in this first statement. I think I will modify that statement as to one particular. I think he

did, in answer to an argument of Mr. Marr, of the Great Northern, perhaps, make some reference to railroads being assessed too low.

Q. When the Governor made this statement about which you have testified, "that is what we assess railways, fifty per cent," he contended, did he not, that railroads were assessed too low?

A. Yes, I think it is susceptible to that inference. I don't think he did, in addition to what I took down, make that statement or contention, that railroad property was assessed too low. I think if he had, Mr. Potts, I would have recorded it.

MR. GRAY: I would like to offer at this time a copy of the proceedings of the State Board of Equalization for 1918.

The document was thereupon marked PLAINTIFF'S EXHIBIT NO. 10.

HARVEY J. KELLEY, sworn on behalf of plaintiff, testified as follows:

DIRECT EXAMINATION:

My name is Harvey J. Kelley. I am secretary of District No. 1 of the Washington State Safety Board, with offices at Spokane. In 1918 I was residing at Harrison, Idaho, and in that year I was a deputy assessor for Kootenai County. As I recall it, I had for assessment townships 47, 48

and 49, 1 East, 1 West, 2 West, possibly not all of 49, 2 West; I don't remember exactly on that. I had 47 and 48, 3 West, and 48, portions of 47, 4 West. And I think possibly I assessed part of 48, 5, but I couldn't be sure of that without a map. The land described embraces the country from Worley and the county line opposite Plummer, up along the Shoshone County line, up the Coeur d'Alene Valley, and in back of the Coeur d'Alene River toward the forest reserve. The property in that district ranges from farm land to timber lands and cut and burned areas, and the towns of Worley and Harrison, and Rose Lake, which is incorporated, also Lane, I believe, is incorporated. With timber lands I assessed as nearly as possible to fifty per cent of the actual cash value, in my judgment, and with agricultural lands I made the same assessment, used that as the basis, and town property the same. I considered cattle such as they have up in the Coeur d'Alene country as merely range cattle used for dairy purposes to a large extent, and I assessed them all as common cattle. We were given an instruction sheet which set forth the minimum value for the various kinds of stock, and used that as a basis.

Q. How did you come to use fifty per cent as the basis for your assessment?

A. In conversation with Mr. Wonacott, the assessor, he told us that the Governor had—

MR. POTTS: I object to that as incompetent and immaterial and hearsay.

THE COURT: I don't think it would be competent to thus show what the Governor may have said, but he can show what his principal said to him as to how he should act.

Q. What did Mr. Wonacott say to you?

THE COURT: You may go ahead and state it, but it will not be considered evidence against the Governor.

A. It was based upon this conversation with the Governor, in which Mr. Wonacott stated the Governor had said that notwithstanding the fact that the law called for full cash value, that he believed the assessors should follow closely along fifty cents on the dollar, and following that conversation, notwithstanding the written instructions, which I considered could not be otherwise than comply with the law, I took it as a general understanding between myself and my employer, who was Mr. Wonacott, that that should be the basis of the assessment, in order to not discriminate unfairly against my neighborhood, so to speak, as compared with other parts of the state.

CROSS EXAMINATION:

I first became a deputy assessor in this county in February, 1917, if I remember correctly. I could not attempt to say definitely when I had this conversation with Wonacott, but I take it that it was immediately after my employment in 1917. I

would not want to say positively that I did not have further conversations with him on the same subject or any similar subject, because I made frequent trips in here and discussed the work with Mr. Wonacott, and it is quite probable that we discussed those things again, and I would not want to say that we did not discuss it or that we did. I don't recall that as a specific conversation. There may be several conversations. I recall having talked with him along that line, but whether or not it was one conversation or whether I talked with him at different times, it has been so long ago and I attached so little importance to it since that I would be unable to say positively. I don't recall any specific conversation of that kind as to date and place, etc.

Q. You don't recall the incident of any specific conversation of that kind, do you?

A. Yes, I do, in this way—

Q. Do you recall the incident of more than one specific conversation of that kind?

A. No, I do not.

Q. As a matter of fact, you got some such impression from general conversation, didn't you?

A. Well, if you want the thing that remains in my memory, the thing that brings the one point to my memory the clearest, I will give it to you.

Q. Well, isn't it a fact, Mr. Kelley, that the only thing that was ever said about fifty per cent was with reference to agricultural lands?

A. That is a point that I am uncertain on. I think not, however.

We had written instructions from Mr. Wonacott both years as to how we should make our assessments.

A certain paper was thereupon marked Defendant's Exhibit 2.

To the best of my memory, Defendant's Exhibit No. 2 is our 1918 instructions. According to the instructions we were instructed to assess all property at its full cash value. I considered that they were my instructions from my superior, with qualifications. When I commenced work under these instructions I followed them to the best of my ability, with the qualifications. I went up on the Coeur d' Alene River and assessed a lot of that bottom land, and a lot of burnt-over, cut-over land, and timber lands. In the spring of 1918 the Coeur d'Alene River lands had been flooded. I assessed the Coeur d'Alene River lands just as closely as I could to fifty per cent of what I considered their cash value, knowing conditions as I did, knowing the country. You misunderstood me if you got the impression that I told you and Mr. Wernette in your offices day before yesterday that I assessed those lands as near as I could at their real value. I did say at that time that a lot of that land had no value practically at all, couldn't be sold, and that some of it I assessed for more than it could be sold for, for the reason that I considered Coeur d'Alene

Valley lands as "white elephants", so to speak, and it had gotten into a position that people were trading it for timber claims that somebody else was anxious to get rid of, or trade it for anything; but for the purpose of assessment it is necessary to get at some basis of valuation to be applied as a whole, because there were improvements there and money invested, and the setting of a valuation on them was a matter of my opinion to a large extent.

Q. Is it not a fact that on a great many of those lands you assessed them for more than they would sell for?

A. Well, to go out and get a cash sale, I have my doubts if you could sell any of that land up there to people knowing conditions?

Q. For its assessed value? A. I think the fact that there are so many delinquent certificates in that valley unpurchased at the present date will bear witness to the fact that it won't pay its taxes. That was a large acreage, but it was a small part of my territory. I assessed approximately a dozen stocks of goods, I would say. In assessing these stocks of goods I ranged from sixty to seventy-five per cent, depending upon the kind of stock, whether it was new or shopworn, and its location, to a large extent, and the amount of business that was being done, that is, I assessed it at sixty to seventy-five per cent of the inventory as it was given to me by the merchants. In my judgment I did not think that from sixty to seventy-five per cent of the in-

ventory price of the stock was its fair cash value. I was carrying out my instructions to assess it at sixty to seventy-five per cent of its full cash value, and in making an assessment my effort was to get at its actual cash value, which, as I said before, I got at only by the inventory furnished me by the merchant. If correct, I considered that the inventory was its actual cash value. I have never been in the mercantile business. At the time of making assessments I had no knowledge of my own as to how the real actual value of a stock of merchandise compared with the inventory price. I took several of the inventories to a man who had been in the business and asked him about them. I did not know that seventy per cent or sixty-five per cent of an inventory of a stock of goods represented its fair cash value; I never approached it with that idea in mind.

I assessed some sawlogs. I was given a list of basic valuations for sawlogs, lumber and timber, which I followed. But may I qualify that statement that I assessed sawlogs. The county had a timber man both years, as I recall it, who went out early in the year and assessed the logs generally throughout the district, and I assessed merely such bunches as were missed by him, or additional logs that had been put in, something of that sort. I reported in several bunches of logs. I do not believe I assessed any white pine logs; I assessed yel-

low pine and mixed, on the basis contained in my written instructions, \$6.00 per thousand.

I believe I assessed no lumber. I think to the best of my memory the man who was sent out by the county to assess the logs right after the first of the year did the assessing of lumber. I have had some experience in logging, and knew the price of saw logs in 1918. I couldn't state it positively now, but I knew at that time; I remember that it was at a figure greater than the assessment, but I don't remember just what the figure was, that is, the market price where logs were delivered to the water.

The cattle in my territory were generally a poor grade of cattle, and almost without exception I assessed them under the heading of common cattle. In assessing them I followed the instruction for common cattle. I can't recall just what it was—\$35.00 a head, I think. (Examining paper) Thirty-five. If it was range cattle being used for dairy purposes I gave them the classification of common cattle, at thirty-five. If they were range stock not being used for dairy purposes I often lumped the bunch according to the condition they were in. In the winter and spring of 1918 \$35.00 was a fairly reasonable price for range cattle. For the ordinary run of cattle, except milch cows, \$35.00 was a reasonable assessment, although of course they would bring more than that on the market. A lot of them were range cattle that were not in condi-

tion to market. As a general rule, after going through the winter up there on the Coeur d'Alene, cattle were not as a rule marketable. I would hardly say that they would have no market value; they have a market value, but you could not put them up as beef cattle or sell them as such. They have a market value, because most butchers are feeders, and they will take them and feed them up.

Offhand I should say that I assessed about eighteen or twenty townships in Kootenai County in 1918, at thirty-six square miles to the township. I assessed the town of Harrison, and assessed the land up the Coeur d'Alene River as far as Lane; I went above the town of Lane, I believe, half way between Lane and Rose Lake. I assessed some land over around Worley; I assessed that entire territory as far as the township line of forty-eight four, I believe. In the Worley country in 1918 a great deal of the land had been patented and sold, so that I would say considerably over half, possibly seventy-five per cent of it, was assessable. Maybe I am mistaken on that, but that is my impression.

RE-DIRECT EXAMINATION:

I consider that land over around Worley as probably some of the best farming land in this part of the country, wheat land.

MR. GRAY: I desire to offer at this time two copies of a proof of publication, one by the Evening Capital News, and the other by the Lewiston Morning Tribune, of an advertisement of the sale of

\$100,000.00 of the State of Idaho Highway Bonds, inserted by the State Treasurer. It is the same advertisement in two different papers.

MR. POTTS: The defendants will admit that these two notices were published on the dates stated in the proof of publication, by John W. Eagleson, State Treasurer, pursuant to an agreement to that effect. We object to their introduction in evidence, on the ground that they are irrelevant and immaterial, and as far as the purported purpose of the introduction of the two exhibits, namely, a statement of the assessed valuation and the real value of property in Idaho, purported to have been made by the State Treasurer, that there is nothing to show that those figures are correct, or that the State Treasurer had any knowledge on which to base the figures as to the real value of property in Idaho, and that the figures are used in connection with an advertisement for the sale of State bonds, and are not shown to be accurate or reliable, and merely the expression of his opinion.

MR. GRAY: He is a member of the State Board of Equalization.

MR. POTTS: May I say that he is not acting in that capacity in that connection.

MR. GRAY: Oh, no, but he is a member of that Board, and he must have considerable information as to the real value and the assessed valuation, and the relation between the two, of property in Idaho, as a member of that Board, and as State

Treasurer of this State he inserts an advertisement stating what the real value is and what the assessed value is, and it simply tends to show that there was information, in carrying out this same line, where Mr. Eagleson called attention to the fact that property in some parts was only assessed at forty per cent.

MR. POTTS: Just one additional objection, or two, in fact. The first, that it doesn't show or purport to show that the real value as stated by him comprises only lands subject to taxation and assessment, or property subject to taxation or assessment, and it is a well-known fact that a vast amount of the property in Idaho is not subject to assessment and taxation. And of course, in boosting the sale of bonds, it is very probable that a man would state the value of all the property in the State in his opinion, including the vast quantity of property in the State, which is not subject to assessment. And furthermore, at least only one of the exhibits is of a date which is material in this inquiry, the one in 1919.

MR. GRAY: I thought they were both the same, Mr. Potts. I understood they were the same advertisement.

MR. POTTS: They were published at a different time, but possibly they are the same advertisement.

MR. GRAY: Late in 1918.

THE COURT: About the same time,—in December, 1918, both of them.

MR. POTTS: They appear to be published at different times.

THE COURT: No; the proof of publication seems to be December, 1918.

MR. POTTS: It must be apparent, Your Honor, that the mere statement of a real value of so many dollars doesn't mean anything, and hasn't any real value as evidence, because certainly if the party making it wished to state the real value he would include all the property in Idaho, whether it was subject to assessment or not. In other words, it gives no comparison for the purposes of this case.

MR. GRAY: He just takes, if Your Honor please, as it is shown here, that it is assessed at about forty per cent.

MR. POTTS: Oh no, he doesn't. It isn't susceptible of any such inference.

THE COURT: I think I shall sustain the objection.

Said copies of proof of publication were thereupon marked for identification as PLAINTIFF'S EXHIBITS 10½ and 11.

E. S. CRANE, recalled as a witness for plaintiff, testified as follows:

DIRECT EXAMINATION:

I have had transcribed into Exhibit 4 the schedules of mortgages and conveyances which have been

testified to by Mr. Hammond of Fremont County, and have checked them over with the original exhibits which have been introduced, and they are accurately shown in Exhibit 4.

Q. Have you transcribed in any of the other counties than those that have heretofore been referred to, the mortgages and conveyances, or other data, with reference to lands?

A. Yes, sir.

I have made a list of the lands upon which the State of Idaho has loaned money in Kootenai County and upon which the Federal Farm Loan Bank has loaned money; also in Bonner County, state and Federal Farm Bank loans; and in Benewah County state loans and federal loans; Minidoka County, mortgages and transfers, by Mr. Wonacott and myself, re-checked by myself. The rest were made by Mr. Wonacott. In Minidoka County I took the real estate transfers, that is deeds and mortgages, of farm lands from the 17th of October, 1917, through the whole of the year of 1918. I took all conveyances of farm lands during that period, and showed that in appropriate columns for Minidoka County, and showed the assessed valuation of those conveyances. Mr. Wonacott and I took all of them off, and I have checked them back, and they are correctly shown in Exhibit 4, I took the mortgages for the same period as the transfers, and they are all shown in Exhibit 4. In Minidoka County I have 312 mortgages, for a total amount of

\$845,190.62, with an assessed valuation of the lands and improvements so mortgaged of \$554,595.50. There were 127 transfers, with an expressed consideration of \$1,250,462.16, and a total assessed valuation of land and improvements of \$561,233.01.

On my tabulation of State and Federal Farm Bank loans in the counties of Kootenai, Benewah and Bonner, procured from the records and correctly transcribed in Exhibit 4, with reference to state loans, I show the name of the owner and the description of the lands, the appraised value by the owner, the appraised value by the State, which I got from the State Land Department in Boise, and the assessed value I got from the County of Kootenai, and the amount of the loan, which I checked both in the State Land Department and upon the records of the county. In Kootenai County I took every state loan there was, every one that appears on the record over here, from a time prior to the 17th of October, 1917, throughout the year of 1918. I find on there six loans, which is all that there were during that period, that were outstanding prior to the 1st of January, 1919. I am referring to loans made during that period. The total amount of the State loans in Kootenai County is \$9,500.00, with a total amount of owners' valuation of \$42,126.00, and a total State appraiser's valuation of \$42,126.00. At Boise that is O. K'd on some of these; where the owner's

valuation is all, it will be O. K'd over here by the appraiser, and if the appraiser disagrees with the owner, it is changed in the appraiser's report. The total assessed value of that land and those improvements for the year 1918 is \$7,405.00.

I have taken the Federal Farm loans in Kootenai County from October, 1917, through the whole year of 1918,—and that is true in each instance, unless I otherwise state,—and in the same manner I have tabulated it in Exhibit 4, and so I have done in all other instances in the tabulation here. There were 213 Federal Bank loans, amounting to \$338,940.00; assessed value of land and improvements, \$251,454.00.

In the same way I have taken the State loans in Benewah County, with an owner's valuation of \$50,970.00; the appraiser's value, O. K'd; amount loaned \$26,500.00; amount assessed, \$16,435.00.

I took the Federal Farm loans in Benewah County, of which there were twenty-seven in number, amounting to \$35,900.00, with an assessed value of \$29,330.00.

In Bonner County there were 143 Federal Bank loans, \$247,765.00; assessed value, land and improvements, \$194,352.40. There were seven state loans in Bonner County, \$10,350.00; owners' valuation, land and improvements, \$42,215.00; State appraiser's valuation, land and improvements, \$26,040.00; total assessed value of land and improvements, \$11,915.00. That is all that I took of those.

During that period in each instance I took all of the various loans.

CROSS-EXAMINATION:

I found the number of Federal loans in Kootenai County in the records, and I myself made an examination throughout the records for that purpose. I looked over each mortgage. I think there is a separate index for the Federal loans. I have forgotten whether it is the State loans or the Federal. I think they must have three different forms over there. They have two. But I had the assistance there of a clerk, and he furnished me with every loan that was made over there. I depended on what he furnished me. I asked him to furnish me the loans, and I took what he gave me; I took all the books he gave me. I think they have a regular form there, a printed form, in the book, on those Federal loans. I examined it, but it has been six or eight months ago. I found 213 loans in Kootenai County. I found the appraisements by the State appraisers at Boise, in the Land Department. I myself examined each one of them. I found the valuations placed on the lands by the owners at Boise, and I myself examined each application that they sent in. I had the assessed value before I went down there, and then filled in the paper there, and I got that assessed valuation myself. In each instance about which I have testified, as to the various figures I have given, I got all those items myself.

RE-DIRECT EXAMINATION:

I employed the secretary of the Spokane Review, in the library, to prepare pages one to four in Exhibit 4. I looked it over and checked it as well as I could against the papers. Page one I think is Union Stock Yards, Spokane, cattle, hogs. No. 2, No. 3, hogs, Chicago stock yards. No. 4, cattle, Chicago stock yards, taken for the year from January 1st to January 31st, 1918.

MR. POST: He said January 31st. He means December 31st.

MR. GRAY: No—just for one month.

WITNESS: Those are the quotations that appear in the Morning Review, of Spokane, and have been day by day placed on those sheets.

MR. GRAY: I desire to offer those in evidence. Market reports are not admissible without proof of the newspaper owner or manager, showing the method of taking them and showing that they are fairly taken. I understand counsel to agree that I need not call the Spokane Review's representative as to the manner in which they are taken.

MR. POTTS: That is what we agreed to. We object to the admission of them, however, on the ground that they are immaterial and irrelevant. They do not show values in Idaho, nor do they show values on the different kinds of stock subject to assessment. They are merely market value for such animals as are fit for market and are placed on the market at Spokane and at Chicago.

MR. GRAY: We will show the freight rates, of course, but I do say that, without further proof, Spokane is so near to Idaho that the price of hogs in Spokane—

THE COURT: That might be true. Perhaps the Spokane quotations might give some indication, but even then, of course, there would have to be some differentiation made between the value of an animal in the stock yards and the value of an animal on the farm. It may go in upon the promise of connecting it up with the value of the animal on the farm or on the range, as the case may be.

FRED E. WONACOTT, heretofore sworn for plaintiff, testified:

DIRECT EXAMINATION:

Referring to Exhibit 4, I myself made the tabulation of various sheets which appear in that exhibit. I made tabulations of the deeds in Benewah County, that is, the transfers, shown on pages 5 to 15 of the exhibit, between the dates of October, 1917, and January 1, 1919. I also made the copy of the mortgages in Benewah County shown on pages 16 to 24, and included all the mortgages, and all the deeds excepting those cemetery lots—well, there are some irregular descriptions in the deeds. For instance, metes and bounds descriptions, where there are long descriptions, where we couldn't get any line on the assessed value compared with the

purchase price. For instance, it would start at a stake some place and run in an irregular direction. Those I omitted, and those other deeds, like the one dollar consideration and only a fifty cent revenue stamp, or one dollar and no revenue stamp. I then proceeded in a uniform manner as to all the other counties. On page 26, for instance, in Benewah County, I took the assessments of all the banks in Benewah County; and page 27, Bonneville County State loans, I took all of them; and page 28, Bannock County, all state loans; page 29, Cassia County, State loans; page 31 Bingham County State loans; page 32—there was a couple of duplicates in there on page 32 in Bingham County; pages 33 and 34, Bingham County deeds, the same as in other counties; page 40, Bonner County banks; page 41, Blaine County banks; page 42, 43 and 44, Blaine County state loans, all of them. Page 141, Lincoln County state loans, all of them between those dates; page 131, Nez Perce County state loans; page 52, Elmore County state loans; page 53, Gooding County state loans; page 54, Idaho County state loans; pages 55 to 59, Idaho County transfers from October, 1917, to October, 1919—I didn't go up to the 1st of January on those,—or 1918, I mean,—for the reason that I worked up to a late hour that night, and I had been there two days, and then I got a young lady there to complete that list. It is in that report there, but I only testify to it up to October 1st, 1918. And pages 55 to 59—that is

the deeds. Pages 60 to 62 is Kootenai County banks. Pages 64 to 67, Kootenai County mortgages; pages 75, Kootenai County transfers; pages 76 to 89, Kootenai County mortgages, excepting the Federal Farm Loan mortgages, and those were excepted in some of those others, the Federal Farm Loan mortgages and the State, which we classed separately. Pages 90 to 102, Kootenai County transfers. Page 117, Minidoka County banks. And then I assisted Mr. Crane in other counties, for instance, in Minidoka county, on mortgages and transfers. He has testified that he checked those.

With reference to those counties in which I have referred to state loans, I also secured from the State Land Department at Boise the appraised value. I followed the same course that Mr. Crane did; I went to the State House first with my work, and I obtained the application of the party making application for the loan, and in that application is shown the appraised value by the State appraiser, the owner's value, that is, the owner's appraisal of it, and the amount of the loan, and description of the land; and I took those down in the different counties that I took, and then I went to the county in which the loan was made or the land was located, and from that record I took myself the assessed value of those lands.

Now with reference to these banks: Kootenai County banks, pages 60 to 62, there is on each of those sheets a description of certain land; that

is land that is owned by the bank, a banking house generally, and additional land, all the land that the bank owns, practically, and the improvements thereon. The book value of the land, shown in one column, is the value put upon the property by the bank in making its report to the assessors; they carry it on their books at those figures; that is the amount that the bank carries those properties at on their own books. I also show the assessed value of the land and the improvements, and also the assessed value of the furniture and fixtures, which is the furniture and fixtures of the bank, and also the book value, where it is shown. Sometimes the banks include it all in one item, that is, include it in this item here. That will be the bank's value of all their property. It will sometimes be included all in one item, but where it is segregated I have it segregated here too. And it shows the assessed value. Then this is the total of this bank here—the First Exchange National Bank of Coeur d'Alene—the total value of all property is \$48,138.06, as carried on their books. The total assessed value—that includes also the improvements on the lands,—the total of the assessed value on that is \$14,988.00. I put the book value of the furniture and fixtures at \$8,098.27, and the assessed value of those furniture and fixtures at \$4,000.00. And that is the system that is carried right through in each case. These figures here, I don't know whether you have any use for them or

not; that is really the assessment of the bank stock. All this is assessed separately from the bank—the furniture and fixtures and the real estate are assessed by the assessors separate from the bank stock. The bank stock is assessed separately, and this shows the assessment of the bank stock, and I deduct the assessment of the other features from the assessment of the stock.

THE COURT: Do the county officers deduct the assessed value of the real estate from the—

A. No, sir—the book value. That is carried on the books of the bank. It is deducted from the capital stock of the bank, and then the balance is assessed to capital stock.

(Continuing) The surplus and undivided profits are added to the capital stock first, and then the deduction is made of the book value of the bank's real estate, improvements, and furniture and fixtures.

THE COURT: That is, if a bank had a capital stock of a hundred thousand dollars and put a book value of one hundred thousand dollars upon their real estate, they wouldn't pay any taxes upon the capital stock?

A. No. We have one of the banks in this county that doesn't pay any tax.

Q. On its stock?

A. On its capital stock, yes, sir. They have more real estate than—

(Continuing) Without going into each of these

several sheets, in each case I have followed the same methods that I have described with reference to those banks in Kootenai County.

MR. GRAY: I desire to offer those in evidence. There are, for the assistance of the court, in this exhibit, compilations of the total amount of the mortgages, for instance, in a county, and the assessed value thereof.

(Witness): In the year 1918 I was assessor of Kootenai County, and was assessor of Kootenai County for two terms, from 1915 to 1918 inclusive. I attended the meetings of the assessors held at Boise in January, 1917, and in December, 1917, copies of the minutes of which have been marked Exhibits 1 and 2. No, I don't think I was at the first meeting either, but I got a copy of that, of course. I was not present in January, 1917, but I was present in December, 1917. And I had in my possession and in my office copies of each of those proceedings. I was present when the assessors at that meeting passed their several resolutions with reference to the assessment of property in the state. During the period of assessment in 1918, for that year, as closely as I could I used those minutes and acted upon the agreements and resolutions there made. There were members of the State Board of Equalization present at the meeting I attended; Governor Alexander was there, and he addressed the assessors at that meeting, in December, 1917, and those minutes there I think show his address

there. I think all the State Board of Equalization were there; that is, they were called in to the meeting anyway.

In the year 1918 I was familiar with the value of property generally in Kootenai County. In Kootenai County, in the year 1918, in making the assessment I tried to arrive at a fifty per cent basis on all property and assess it at that rate. Prior to that time there had been a great deal of criticism about the valuations placed on the property in Kootenai County by me, and I was considered a high valuation assessor, and I tried as near as I could to conform to the arrangements made at this meeting in 1917, and I made up my mind, from the figures that were placed on the livestock and other property that was considered at this meeting, that a fifty per cent basis was what the entire Board and also the assessors were attempting to put through, at this meeting; I refer to the State Board of Equalization.

MR. POTTS: I think, if Your Honor please, that the statement of the witness that he made up his mind to some effect is very incompetent testimony. He might have made up his mind to something without any basis for it.

THE COURT: Yes. That part will be stricken out.

WITNESS: On page 11 of these minutes, it was moved and seconded that the valuation for 1917 on

cattle be adopted for 1918. That 1917 assessment was \$30.00 a head for all cattle two years old and over, except milch cows, and it was agreed on \$40.00 a head for milch cows. It says here that hogs were six cents a pound, but I think really the agreement was six and a half cents for all hogs that was grown hogs; that was at the weight price. The Governor in his address to the assessors thought that sheep would stand raising. Sheep in 1917 had been assessed at \$6.00 a head, and in 1918 he recommended that they be raised \$2.00, and the assessors adopted that figure, \$8.00 a head. And this price of \$12.00 a head on fine stock was left to the judgment of the assessors. The matter of assessment of furniture and fixtures was next discussed, and decided to assess on the same basis as other property; and also tractors and threshing machines be assessed as machinery. All these things were either agreed to be assessed on the same basis as 1917, or with the additions that was recommended by the Governor, and all those figures there are really on a basis of fifty per cent of the actual value. I knew or had occasion to make inquiry and ascertain the market value of hogs in 1918, at the assessment time, and it was something over \$15.00 a hundred, live weight. It was upon those resolutions and those facts that I issued those instructions and made that assessment. In the written instructions that were given to my deputies, the

law has always said that the assessors should assess property at full cash value; but this has never been done, and although those printed instructions, or those written instructions had told them to assess—in the commencement of it it said to assess property at full cash value—yet in the figures that was given afterwards, following out the suggestions of the State Board and the meeting of the assessors, the figures that was placed in those instructions were on a basis of fifty per cent; that was my judgment at that time.

Q. Mr. Wonacott, I will ask you if at any time you procured from the Bureau of Crop Statistics in Blackfoot, Idaho, a copy of the bulletin which was issued by that Bureau, of the United States Department of Agriculture?

A. Yes, sir.

Q. Is that the exhibit which you hold in your hands?

A. Yes, sir; but I got this in Boise, from Mr. Julius Jacobsen; he gave me this.

Q. Who is he?

A. He is the United States officer there, and he compiles these records.

Q. An officer of the department?

A. Yes, sir.

Said document was thereupon marked PLAIN-TIFF'S EXHIBIT NO. 12.

MR. GRAY: January 10, 1919, is the date. I would like to offer that in evidence.

MR. POTTS: This proposed exhibit seems to be incompetent, irrelevant, and immaterial, and we object to it on all those grounds, and it is not properly identified or shown to be correct or accurate, or certified by any public official.

MR. GRAY: It is a regular bulletin, and it is issued by one of the departments of the United States.

MR. POTTS: It is not identified or certified as being correct or accurate.

THE COURT: The objection is sustained.

MR. GRAY: I would like to offer at this time, if Your Honor please, a copy of the report of the Department of Farm Markets of the State of Idaho. That is not certified. I sent for one, but it has not arrived, Mr. Potts. It is the regular report issued by that department.

MR. POTTS: We object to it as incompetent, irrelevant, and immaterial.

MR. GRAY: You don't object to the fact that it is not a certified copy? I will have that here, I imagine, in time, but—I would be glad to have you examine it.

MR. POTTS: I don't see in what respect it would be material in this case.

MR. GRAY: Well, I am perfectly willing to say to you the reason. The assessors of this state by law are required to report each year to the Director of the Farm Markets the production of the various grains and hay, etc., in the county, and that is com-

pared by him and put in his official report, required to be done by law. It bears a very intimate relation to the total assessed value of the agricultural property in the state.

MR. POTTS: We object to it as incompetent and immaterial.

MR. GRAY: I will ask leave at some time before the case is finally submitted to Your Honor, to substitute a certified copy.

CROSS-EXAMINATION:

I think I was known as a high assessor prior to 1918; prior to that time I had tried to substantially comply with the law requiring property to be assessed at its full cash value. I think in fact there is quite a reduction in the assessment of property in Kootenai County for 1918 from 1917. In 1918 I did not follow the same basis for assessment of property in Kootenai County generally that I had followed in 1917. In 1918 I issued written instructions to my various field deputies to guide them in the assessment of property. I don't know whether Defendant's Exhibit 2 is a copy of those written instructions or not. When you read it before I thought it referred to cattle at \$35.00 a head, and I know the rate was \$30.00 a head, in the instructions. It is pretty near a copy, but I don't know whether this is the 1917 or the 1918 statement or instructions. You will notice here that some of these figures have changed here,—cattle, milch cows, \$40.00 a head. I am not certain whether

that is a copy or not. Forty dollars a head is the proper figure for milch cows; that is what we assessed them for in 1918. In 1917 I assessed them at \$35.00. So I raised the valuation on milch cows in 1918, for the reason that the State Board raised my valuation themselves in 1917. They increased milch cows to conform to the balance of the State, and in 1918 the figures fixed by the assessors was \$40.00 a head, and consequently I put the figure at \$40.00 a head. I think cattle was the same price in 1918 as in 1917, \$30.00 a head. I think the city property here in Coeur d'Alene was reduced quite materially in 1918; that is my recollection of it. I don't remember whether there was much reduction in other property; I don't think there was. I don't remember whether there was any reduction in other property as a class in 1918? I don't think there was any substantial reason for reducing the assessed valuation of Coeur d'Alene City property in 1918, on account of depressed conditions, depressed valuation in property.

Q. Is it not a fact that on the second Monday of January, 1918, and for months prior to that and succeeding that, that there was practically no sale for property in this city?

A. I don't know about that. I don't remember just about the sales, whether there was very many sales made or not. I do not remember that there were no sales made or that property couldn't be sold.

I think in 1918 they had got practically over the real low prices. It is not a fact that the reason for the reduction of valuations of Coeur d'Alene property in 1918 was because it had very materially decreased in actual value. It had got to the bottom just as far as it had to go, and it was really better then, in January, 1918, than it had been for some time.

Q. Then aside from the decrease in property in this city, you substantially complied with the law in the assessment of other property in the county in 1918, did you?

A. I assessed it at about fifty per cent.

Q. Will you kindly explain to us how it is that if you did substantially comply with the law prior to 1918 and assessed all property except property in this city without reduction in that year, that you say now that you assessed at fifty per cent in 1918?

A. Well, I did the same as a great many other assessors did all the time in this state. While the law has always been that property should be assessed at its full cash value, yet the law has never been complied with, and there was a great deal of complaint about my assessment, especially of Coeur d'Alene property, prior to 1917. Everybody had said that I had over-assessed them, and hadn't assessed property as low as I had in other sections, and that is the reason that I gave them the reduction in Coeur d'Alene in 1918. I think I tried

to comply with the law at all times. And this matter about the full cash value was a case where the authorities over the assessors acquiesced in it, and not only acquiesced in it but always insisted that the assessors break the law practically when they came to assessing property. I don't see any change in the assessment this year. The assessment of this year is practically a copy of my assessment last year.

And my assessment last year was practically a copy of the assessment in 1917, with the exception of Coeur d'Alene.

I had attended a meeting of the assessors of the State prior to this meeting held in December, 1917. At this meeting about which I have testified prices on various livestock were agreed upon, as a basis of reaching a uniform method of assessing livestock throughout the state. And the same is true as to other articles of personal property, for the purpose of getting at uniformity in valuation. I do not remember whether, in order to get uniformity in the assessment of stocks of merchandise it was agreed that seventy per cent of the inventory price should be the valuation for assessment purposes. But I remember the Governor's address to the assessors. He suggested that merchandise should be raised in the state; all classes of merchandise had increased in value, and for that reason he thought that the stocks of merchandise, or that the total value of merchandise should be raised throughout the state.

In assessing merchandise I think we took about fifty per cent of the inventory price; and the same way with furniture and fixtures.

I think that in assessing the classes of personal property which are enumerated in my instructions to field deputies, those prices were followed generally in this county; for instance, white pine logs, \$9.00 per thousand; yellow pine and mixed logs, \$6.00 per thousand; and other items of personal property as specified. To the best of my knowledge, I think they were followed in this county. I think the total assessment made by me of property in Kootenai County in 1917 was along about eleven million something. I am not sure what it was in 1918; it may have been twelve in 1918. I haven't got the figures here. It is in the meeting of the State Board of Equalization there; it states there. But it is around that figure. That is exclusive of public service corporations. Kootenai County it doesn't show. It shows the total equalized valuation of the original roll. I find it on page 37—Kootenai County, \$11,595,837, is the equalized value. In arriving at the equalized value I think there was a little increase made in the valuation that I made; I think that the State Board increased lumber. I can't remember what actually was increased, but I know the State Board increased some things. I think they increased lumber, one item. It is all shown in the report of the State Board. I took the figures for this date on pages 60, 61 and 62, of

Exhibit 4, the bank assessments in Kootenai County, from the records in this county. And the book value of the lands I took from the statements furnished by the banks to the assessor. They reported the sums at which they were carrying their real estate on their books. In making that assessment a deduction of the book value of the real estate and the furniture and fixtures was allowed from the book value of the capital and surplus and undivided profits, and the assessment was made on the balance remaining, the assessment of the capital stock. The real estate was assessed separately, and then I made an assessment on the book value of the capital stock, less the book value of the real estate and furniture and fixtures. The assessment on the book value of the capital stock, after making the deduction I have mentioned, was for its full book value, less that deduction, and not on any percentage basis. I don't think I knew anything about the value of bank stock in this county; in fact I didn't own any.

Q. You have testified that you got your data and prepared all these various tabulations which were compiled by you, in the same way, used the same methods in the different counties, as far as each tabulation was concerned; for instance, that you used the same method in getting your tabulations of transfers and deeds in the various counties, and the same methods in getting your tabulations of Federal Land Bank loans?

A. I didn't take any Federal Land Bank loans. I took deeds and mortgages, and some state loans, in those pages that I wrote off there, and used the same method in taking them all. Among others I took the transfers in Kootenai County, and mortgages in Kootenai County. I think I followed the same methods in the other counties in which I made these tabulations that I did in Kootenai County.

Q. Your tabulations in other counties are just as accurate and no more accurate or correct than those in Kootenai County, are they?

A. I think they are accurate, yes.

I used the same care, and no more, in making my tabulations in other counties about which I have testified as I did in Kootenai County, and there is no reason to believe that my tabulations in the other counties are any more accurate than the tabulations in Kootenai County.

I am not right now employed by the plaintiff, the Washington Water Power Company. I was in their employment for about five months perhaps altogether, in this year. I was not employed by them in 1918 at all.

Q. Are you not, as a matter of fact, here now on a per diem, that is, so much a day, for your services, from the Washington Water Power Company?

A. No, sir, not under any salary or anything now.

Q. On the 24th day of June, 1918, after you had

completed your real property assessment roll, is it not a fact that you subscribed and swore to an affidavit stating, among other things, that according to the best of your judgment, information and belief, you had assessed all property in Kootenai County at its full cash value?

A. I think I made that affidavit.

(Continuing) I don't remember just what day it was; I made the affidavit. I also made an affidavit to the same effect during the latter part of the year, on or about the 17th day of December, 1918, as to my assessment of personal property in this county, and swore to both of those affidavits. In assessing the property in this county in the year 1918 I assessed it for fifty per cent, as near as I could.

Q. Did you instruct any of your field deputies in the year 1918 to assess the property which they were to assess on any percentage less than its full cash value in Kootenai County?

A. I got out that written instruction for them, and then I told them to follow the figures that was given in that instruction, and those figures are about fifty per cent, I think.

(Continuing) I think there may have been classes of property not included in those instructions; I tried to get most of the classes in there.

Q. Did you, aside from these written instructions, instruct your field deputies in 1918 to assess on any percentage of full cash value?

A. I don't think I did, except Mr. Kelly. I think

Mr. Kelly and I talked the matter over before he went out in the field. That is the conversation that he testified to. I don't remember when it was, but it was in 1918, when he started out. He wanted to know if he was to assess at fifty per cent of the value, and I told him the law required us to assess at full cash value, and it wouldn't be right for me to tell him to assess at fifty per cent; but I said, "You can draw your own conclusions; there are the figures."

(Continuing) That is the way I handled it and that is the way the rest of the deputies got it, too. If I remember, I think they all had the same instructions. I don't think I told them to assess at fifty per cent, but I gave them those figures, and those figures are about fifty per cent of the actual value. I do not think that \$9.00 per thousand for white pine logs was in excess of fifty per cent; I know pretty well. I know that yellow pine and mixed timber at \$6.00 a thousand isn't in excess of fifty per cent; it isn't fifty per cent of what they paid in January, 1918. In January, 1918, yellow pine and mixed were not selling at about eight or nine dollars. I sold to the Winton Lumber Company myself at \$13.00 a thousand, in the spring of 1918. That was while I was assessor.

RE-DIRECT EXAMINATION:

Referring to my employment by the Washington Water Power Company, Mr. Gray employed me and has been paying me, when I worked, \$200.00 a

month and my expenses. I was employed in making these compilations. I think the employment started on the 2nd of April, and I got back here some time the latter part of June—about the first of June, I guess it was—and then I went out again in July, right after the 4th of July, and was nearly two months on that trip. Then there was one additional month since then, but I got through about a month ago.

7:30 P. M., Dec. 18, 1919.

MR. POTTS: We admitted that the sum of \$23,-080.84 was tendered, and we didn't deny that. We denied the allegations that the plaintiff had tendered the sum legally due on its said property to said tax collector, or has been ready and willing to pay. As the facts are alleged, it is not denied that the tender was made as alleged.

MR. GRAY: Since that day, under order of the court, the money has been paid, the amount that was tendered.

SETH D. JONES, sworn on behalf of plaintiff, testified as follows:

DIRECT EXAMINATION:

I reside at Whitebird, Idaho County, Idaho; was born in Idaho County in 1869. I am a farmer and stock raiser, and was engaged in that business in 1918 and prior to that time. I have been engaged in that business most of my life. In my business as a farmer and stock man I have been engaged in

buying and selling and raising cattle. I have handled very little sheep, but have handled lots of hogs. I was familiar with the cash value of common cattle on the second Monday of January, 1918, the ordinary run of cattle, not including calves or yearlings, that you would find in that country, in Idaho County. That value was about fifty to seventy-five dollars. The value per head, taking herds as they would run, would be owing to the quality and how they were bred. The value of average cattle I would say would be about sixty dollars. The value of sheep per head would vary, according to the class of ewes and the breeding, from twelve to eighteen dollars, or maybe better, for special bunches. The average value of a bunch that you would find at that time of the year, if they were young, and good ewes, would be about sixteen now, or at that time they would be about eighteen. The value of stock hogs per pound, live weight, in that community at that time was about twelve and a half cents a pound. I am familiar with the value of agricultural lands in Idaho County; I handle some land, and I think I was familiar with the value in 1918. I have observed sales and known of sales personally of agricultural lands throughout that county, and I have bought and sold land. The average value of agricultural lands in Idaho County at that time would be owing to the location and the kind of land. The general average value of agricultural land in the county would be from \$85.00 to

\$125.00 an acre. In my business I was familiar with the cash value of dairy cows, milch cows, in that community, at that time, and it would be from seventy-five to a hundred dollars.

CROSS EXAMINATION:

I do not think there was any agricultural land in Idaho County in January, 1918, on Camas Prairie, or in that country, worth less than \$85.00 an acre, excluding the rocky and rough land that would be too rocky to farm; that would have to be for grazing purposes. Every piece of agricultural land in that county on Camas Prairie that was fit to farm was worth \$85.00 an acre at that time. The biggest portion of the farm land in Idaho County is on Camas Prairie, I should say ninety per cent. The other ten per cent is in the Clearwater country and in the Salmon River country. In my figures of from eighty-five to a hundred and twenty-five dollars I included all the good farming land there; I included the Clearwater and Salmon River country. I don't know of any land that was fit to farm selling for less than \$85.00 an acre in 1918. It was selling now and then; it wasn't selling all the time; there were a few sales now and then. There are a few incorporated tracts of land on Camas Prairie, and some Indian land on the north end, but very little of the Indian land in Idaho County.

In the grade of cattle which I have designated as common cattle, ranging from fifty to seventy-five dollars per head, I figure the way the cattle are

graded, with the proportion of blood and care and attention that makes them good cattle. In dairy cattle there might be a little poorer grade than the grade of common cattle about which I have testified and on which I have placed these prices; they might go down a little lower in dairy cattle, that is, bred from Jerseys and Holsteins and the like, they would go down lower than that, lower than common cattle, when they are turned into beef produce they are not worth so much. These cattle that were worth from fifty to seventy-five dollars per head, the fifty dollar cattle wouldn't be very good, but the seventy-five would have to be extra good cattle; they would have to have their even proportion of steers, to be classed up, an even proportionment. They would be what I would term stock cattle, that is, two-year-old steers and two-year-old heifers, with yearlings and calves included. They would have to be a good grade of cattle to be worth that money. They were not the class of cattle which were ready to fatten for the market, but for breeding purposes and young steers to prepare for the next year, to make beef the next year. There are not very many cattle in our country that wouldn't come within the grade of common cattle, because they raise mostly beef, with very little dairying there. Ten or twelve per cent, something like that, would be as much as there would be.

There were a good many herds of sheep in Idaho County in 1918, and at that particular time sheep

generally were higher than they are now.

Q. And higher than—

MR. M'NAUGHTON: I think that is immaterial.

THE COURT: He may answer.

Q. And higher than generally, than ordinarily?

A. I think that last year was a little the highest year we had on sheep; that is the general impression of the sheep men.

(Continuing) I think I gave you the minimum on hogs in 1918, but generally speaking hogs were a very high price, twelve and a half up.

There were a great many sheep owned in Idaho County. There was a great many men went into sheep there last year and year before last; they sold out their cattle and bought sheep. There was not very much dairying in that county; there were a few milch cows; milch cows were rather scarce. People gave a good price for what they called good milch cows.

RE-DIRECT EXAMINATION:

In giving my value on hogs as twelve and a half cents up, they were as high as twenty-one cents this summer.

RE-CROSS EXAMINATION:

That would be for stock hogs; fat hogs I think went about right around twenty-two cents. If the people had plenty of feed they wanted the stock hogs; there was a good demand for stock hogs last year. In January people didn't want to feed stock hogs, and after they got the feed in them and got

them ready for market the packers put up the extreme price on hogs, and I think hogs went to twenty-three cents in Spokane. They were worth about twenty-two there. The difference in the range of prices was between one part of the year and another. In the winter of 1918 hogs were lower. The prices that I have mentioned were for stubble-field hogs and also for shipping. Those prices were paid generally at the point of delivery, at the railroad stations, on Camas Prairie.

JOHN S. SIMPSON, sworn on behalf of plaintiff, testified as follows:

I am a certified public accountant of the State of Washington, at present employed by the Washington Water Power Company as auditor, and reside at Spokane. I have occupied that position since August 28, 1918. Prior to that time I was employed by the Washington Water Power Company as a special accountant, from about February 1, 1918.

Prior to the second Monday of January, 1918, there was prepared by the then auditor of the Washington Water Power Company, a list of operating properties of the Washington Water Power Company, subscribed and sworn to by the secretary of the Washington Water Power Company, which I checked with the books, and which I afterwards saw at Boise, during July, 1918, I think, during the meeting of the Board of Equalization. There was a copy of the report of the President or Board of Di-

rectors of the company also forwarded, at that time, or soon after. I saw a request for that report, and know that it was forwarded, and that also was at Boise in July. We kept an office copy of that report which was sent to the State Auditor, and which I have here. I have both a copy to the Board of Equalization and a copy of the annual report of the Washington Water Power Company for the year ending December 31, 1917.

MR. GRAY: I will offer these in evidence.

Said documents were thereupon marked PLAIN-TIFF'S EXHIBITS 13 and 14.

WITNESS: The office copy which we kept checks exactly with the copy sent to Boise, to the Board. There was not, to my knowledge, any further request or any request made by the State Board of Equalization for any further data or information or facts. In the course of business all such requests are referred to me and I have heard of none. I was at Boise in August, 1914, at the session of the State Board of Equalization. Mr. Gray and myself were present, representing the Washington Water Power Company. I think at that time Mr. Gray read from the findings of the Public Utilities Commission of Idaho on the value of the property of the Washington Water Power Company in this state, and also presented a statement of the mining business that we had lost during the year in the Coeur d'Alenes, also the percentage of taxes paid in Idaho to the gross earnings of the company

in Idaho. The attention of the Board of Equalization was directed to what the instrument was that Mr. Gray read to them. I think it was referred to by Mr. Eagleson or Mr. Van Dusen, State Auditor. The Board had before them a copy of that judgment and those findings of the Public Utilities Commission, and it was discussed and questions asked Mr. Gray concerning it at that time.

MR. GRAY: I desire to offer a copy of that opinion and those findings, in case No. F54.

Said document was thereupon marked PLAIN-TIFF'S EXHIBIT NO. 15.

The witness then, upon request, produced a copy of the other paper which Mr. Gray had presented to the Board.

MR. GRAY: In that connection, I should like to offer the original copies of the complaint and several orders directing the Washington Water Power Company to appear and answer in the case of Peterson against the Washington Water Power Company. Those are all original copies, except the answer, which is my office copy.

MR. POTTS: We think that is immaterial, and object to it on that ground. We admit that the Public Utilities Commission had jurisdiction to enter the judgment and decision and findings.

MR. GRAY: I alleged in the complaint that this was a case which did involve a hearing upon the valuation of the company's property, and you denied it.

MR. POTTS: I denied it in the way it was alleged.

MR. GRAY: You do not deny that the judgment was entered in the case in which the valuation of that property was involved?

MR. POTTS: We alleged it, and we now admit that the Public Utilities Commission rendered the judgment and decision in the action of Peterson against the Washington Water Power Company, in case No. F54, in which this order No. 504 was entered.

MR. GRAY: And I want an admission, or else the record, to show that not only did they have jurisdiction, but that one of the questions involved was the valuation of the property of the Washington Water Power Company in Idaho.

MR. POTTS: We admit that. We admit that the case was for the purpose of determining the valuation of the property.

Q. This is an exact copy of the paper which I filed at that time, of the other document, Mr. Simpson?

A. Yes, sir.

MR. GRAY: I offer that in evidence.

Said paper was thereupon marked PLAIN-TIFF'S EXHIBIT NO. 16.

MR. POTTS: We object to this offer as immaterial.

MR. GRAY: It is part of the showing.

THE COURT: You contend that you had this before the Board?

MR. POTTS: We concede that it is admissible for the purpose of showing what was presented to the State Board.

THE COURT: Very well.

WITNESS: You offered me as a witness before the Board and had me sworn and present the facts as I knew them, under oath, and also with reference to the exhibit which has just been introduced, together with the findings of the Commission. Plaintiff's Exhibit No. 16 was prepared under my direction. Mr. Gray also had before the Board a statement showing, I think, the sale values and assessed values of land in different parts of the state. I remember that very document that you offered (referring to Plaintiff's Exhibit No. 17). That gives the owner's value and the appraiser's value, and the loan value and assessed value of land in the State of Idaho. I remember perfectly your having that document there and asking to read it, and calling the attention of the Board to it.

Said document was thereupon marked PLAINTIFF'S EXHIBIT NO. 17.

MR. GRAY: We offer this in evidence.

THE COURT: It may go in.

Q. Have you any recollection as to what statements, if any, I did make with reference to the proportion or the ratio to the full cash value of the assessed value in Idaho was?

To which question counsel for defendants objected, on the ground that it was immaterial and incompetent, which objection was by the Court sustained, and to which ruling of the court the plaintiff then and there excepted.

WITNESS: At the time the decision of the Public Utilities Commission was filed I checked the same over carefully, and have since. I helped prepare the computations and figures contained therein. I am very familiar with the operating property of the Washington Water Power Company in this state. Paragraph seven includes the operating property of the company within the State of Idaho. In the appraisal and inventory set forth in the decision of the Idaho Public Utilities Commission, Exhibit 15, all of that property is not included; the operating property at St. Maries is not included. That is a distribution system only. It is not connected with the power transmission lines of the Washington Water Power Company; the power is purchased from the Milwaukee Lumber Company. All of the other operating property of the Washington Water Power Company is listed in the findings of the Commission. Subsequent to the date fixed as the date of finding the value by the Commission, that is, as of December 31, 1917, there were additions to the plant which were not included within that appraisal. St. Maries was excepted. There were no additions up to December 31, 1917; there were during the year 1918. We could not ac-

count for any change between December 31, 1917, and the second Monday of January, 1918. There has been an appraisal of the property at St. Maries by Mr. Henry L. Gray. Mr. Fletcher made the actual count and pricing of the property, the date of that appraisal being June 30, 1914. There have been additions made to that plant since that date, the additions from June 30, 1914, to December 31, 1917, amounting to \$9,627.00. Those are actual expenditures, taken from the books of the company. The total value of that plant, as shown by Mr. Fletcher's appraisal in 1914, was \$29,752.00. Independent of Mr. Fletcher's figures, I checked over the inventory of the property at St. Maries and priced it, using for that purpose largely the actual cost as taken from the books. The cost of that plant, as taken from the books, according to my figures, was forty-three thousand and some odd dollars, I think, the original cost of the property, upon which I computed the depreciation and fixed the depreciated value, based upon the cost, as of December 31, 1917. I used the same depreciation allowance as are used by the Public Service Engineers of Washington in the appraisal of the property of the Washington Water Power Company, and the same as were used in the Idaho decision also. As a general rule, an operating property runs about seventy-three per cent of the value new, and after making calculations I decided that was about right, and so used that in arriving at a present

value of approximately \$31,000.00.

I have made an investigation into the earnings of the Washington Water Power Company from its Idaho business, for several years last past, and have prepared a table showing the gross earnings and the cost of operation and the net earnings, which I have here. There are two tables, one showing the gross revenue and another showing the operating expense, depreciation and taxes; that statement shows the revenue for the years 1911 to August 31, 1919, inclusive. That was taken from the books of the company by myself.

Said table was thereupon marked PLAINTIFF'S EXHIBIT NO. 18.

The next sheet shows the operating expenses, taxes, and depreciation of property in Idaho for the years 1911 to 1918 inclusive, and was taken by me in the same way. Only I might add that the cost of production, commercial and general expense, have to be apportioned. In that apportionment I have used the usual rules that commissions generally take to ascertain the portion of expense of a company like our own that goes to any particular locality.

Said table was thereupon marked PLAINTIFF'S EXHIBIT NO. 19.

On the cost of production I took the percentage of the kilowatt hours distributed within the State of Idaho to the total production of all the power plants. On the commercial expense I divided that

on the number of accounts, on the percentage that the number of accounts in the State of Idaho bear to the total percentage of the number of accounts of the company. On the general expense, I divided on the percentage that the gross revenues in the State of Idaho bear to the total revenues of the company. For my depreciation I use the same percentages as the engineers of the Public Service Commission of Washington used in figuring our rates, namely, three per cent. Those are substantially the same rates of depreciation which are found in the report and which were used in the findings of the Idaho Commission, only they are figured a little different. In the findings of the Commission the depreciation is found on each class of property, which would be somewhat higher than three per cent. While I have arrived at a figure of three per cent, which, applied to the total value of the property, including non-depreciating property, such as real estate—but you get practically the same result; but I just did that for convenience in figuring.

MR. GRAY: I offer in evidence Plaintiff's Exhibits 18 and 19.

To which offer of the plaintiff the defendant then and there objected, on the ground of immateriality and irrelevancy, which objection was by the court overruled.

Q. Mr. Simpson, have you prepared, simply for convenience, the percentage of return upon the

sum of \$2,470,000.00 represented by the net revenue in Idaho, for the years 1916, 1917 and 1918?

A. Yes.

Q. What are they?

MR. POTTS: We object to that as immaterial and irrelevant, and not responsive to any issue in this case, for the reason that the sum of \$2,470,000.00 is not shown by the evidence in this case to be any valuation of any property of the Washington Water Power Company.

THE COURT: Well, I will let him answer. We will consider the whole subject later.

A. In 1916 the per cent earned on \$2,470,000.00 was 5.2 per cent. In 1917 it was 6.3 per cent. In 1918 it was 4.3 per cent.

(Continuing) As chief accountant of the Public Service Commission of Washington, I prepared a table showing the actual cost of the lands and water rights in the several power sites of the Washington Water Power Company on the Spokane River, which is contained in the findings of the Public Utilities Commission of Idaho. I have checked those figures over so that I know they are correct. The property of the Washington Water Power Company is situated in the counties of Kootenai, Bonner, Shoshone, Latah, Nez Perce and Benewah, State of Idaho, and in those several counties is situated in different school and road districts and in different municipalities, of which there are a large number. I made a computation to

determine the percentage of the gross income in Idaho assessed for state and county taxes for 1918.

Q. What was the per cent of the gross income of this company in Idaho assessed as state, county and municipal taxes, for the year 1918?

MR. POTTS: Objected to as immaterial and irrelevant.

THE COURT: I don't see its materiality.

MR. GRAY: It is in the statement which I presented to the Board of Equalization, and I desire to follow it up by further testimony from this witness that he has taken from the census reports, the reports of several thousand public utility companies, and the percentage of gross income which is charged for such taxes, for the purpose of showing that it is exorbitant and a large sum, so large that it in itself attracts attention. It is out of line with that tax which is paid by public utility companies all over the United States. Mr. Post suggests that it is so high that it almost raises the inference of wrong being done to this company.

THE COURT: I will let it go in to make up the record, although I don't think it is competent.

A. Thirteen and six-tenths per cent.

WITNESS: I have prepared a statement of 3659 operating electric light and power properties, taken from the United States Census Report of 1912, showing the percentage of the gross income which they are required to pay in state, county, and municipal taxes. This paper which I hand you is

a tabulation of such information, in geographic divisions, with the number of stations in each geographic division of the country, the gross revenue derived from operation, the amount of real and personal taxes, and the per cent of the tax to the revenue.

Said paper was thereupon marked PLAIN-TIFF'S EXHIBIT NO. 20.

MR. GRAY: I offer it in evidence.

MR. POTTS: Objected to as incompetent, irrelevant, and immaterial, and not the best evidence, but principally because it is irrelevant.

THE COURT: I think I shall let it go in with the other, but just to make up the record. I think, Mr. Gray, that I shall exclude both of these. You can make up your record the same way. They are both written documents. No—the other was an oral answer.

MR. GRAY: An oral answer.

MR. POST: The other is a mere mathematical compilation that the attorneys can make.

THE COURT: Yes. Your record can be made up just the same.

CROSS-EXAMINATION:

I computed the net earnings of the Idaho property of the Washington Water Power Company for several years; the computation I made was earnings on the valuation of \$2,470,000.00. I have computed the actual net earnings of the Washington Water Power Company, but I didn't put the

sheet in. It is just the gross earnings on that sheet, and on the other sheet are the operating expenses, so it is a mere matter of computation; you would get that simply by subtracting one footing from the other. I do not think the report I filed with the Board of Equalization showed our net earnings in Idaho. The report that we filed with the State Board in 1918 said that the net earnings in Idaho were not available; we give the earnings of the entire company. I did not make that report. I made the computations included on Plaintiff's Exhibits 18 and 19, from the books of the company. The revenue was taken exactly from the books; it was kept that way on the books. There is a segregation of the income as between all localities, that is, the income coming from the Coeur d'Alene mines and from the City of Coeur d'Alene, etc., just as you see it on that statement. There was not kept in the year 1918 on the books of the Company an account showing the net income of the Idaho property. As far as the segregations included here are concerned, I made them by taking what I found on the books and segregating it, or apportioning it. I apportioned it to Idaho on the basis of the kilowatt hours distributed in the state. That is to say, I took the total number of kilowatt hours on the whole system, and the cost of production of the whole system, and took the number of kilowatt hours distributed in Idaho, and if it was a certain per cent, say 25 per cent, I

took 25 per cent of the cost of production. If we produced all of our power in Idaho and distributed it all in Washington, the total cost of production would go to Washington. There is included in cost of production the operation and maintenance of the power plants and tie lines. That does not take into consideration values of property at all; that is just the amounts paid out for wages of operators, oil, waste, etc., and supplies used in operating the power plant. It is not divided on the basis of actual cost of operation in each state. I do not know the comparative cost of operation of that part of the plant in the state of Washington as compared with that part of the plant in the State of Idaho. That method of apportioning is without regard to the actual expenditures in the state, from the fact that part of the power that is used in the state comes from the State of Washington, the Post Falls plant not being able to supply all the power that is used in the State of Idaho. The storage part of the property in Idaho contributes very materially toward operating the property in Washington; it enables the plants in Washington to produce more kilowatt hours than they otherwise would. I had no correspondence that I know of with the State Board of Equalization, in 1918, on behalf of the Washington Water Power Company. If the State Board of Equalization, through the State Auditor, requested that it be furnished the net income of the property in Idaho, or a segregation of the income,

no such letter reached me, and I don't know anything about it. As I explained, I was special accountant in the employ of the company at that time; I was not the regular auditor, up to August 28, 1918. I was doing special auditing for the company, and made figures for that assessment; I was in charge of the figures for the assessment, so that if there was any such correspondence it should have been referred to me.

THE COURT: I don't believe I am quite clear yet as to just what bearing these two or three sheets you have offered would have upon the ultimate question of the value of the property in this state. Using that extreme illustration again,—we will take the Post Falls plant—suppose that all the power which you developed there were taken into Washington and sold there, distributed, so that there was no revenue at all coming in from Idaho, what would be the effect, according to your method, upon valuation of property for assessment purposes in this State? Would the property here have any value at all in Idaho?

A. Not any earning value, no, sir.

Q. Would it have any assessable value, if you just take those accounts?

A. No, sir, it wouldn't have any value at all in Idaho if you determine its valuation from an earnings standpoint.

Q. I mean on the basis on which you prepared those sheets?

A. Yes, sir.

Q. In that case there would be nothing assessable at all in Idaho?

A. No, sir.

RE-DIRECT EXAMINATION:

The Washington Water Power Company has four power plants, located on the Spokane River, one at Post Falls, Idaho, one at Spokane, one at Long Lake, and one at Little Falls. What we call tie lines connect all the plants together, and all the electricity generated is thrown into the common transmission system. In determining the cost of production, we keep separate accounts so that we can determine the cost of production of a kilowatt hour at any one plant; we have a separate account of operating expense for each plant. We are not able to determine how many kilowatt hours from each plant go, for instance, into Washington, or Idaho, or any other place; it is all fed into the system. I know of no way by which we can determine the production cost except in the manner we have. You could determine the production cost at the plant itself, but you couldn't after it is distributed. So far as I am able to judge, there is no particular difference in the cost of production at one place or another; it will average about the same.

RE-CROSS EXAMINATION:

When I was present before the State Board of Equalization in 1918 with Mr. Gray, Mr. Gray presented to the State Board of Equalization a copy of

the findings and decision of the Public Utilities Commission in this case.

JOHN P. GRAY, sworn as a witness for plaintiff, testified as follows:

DIRECT EXAMINATION:

In the year 1918 I appeared before the State Board of Equalization in the matter of the assessment of the property of the Washington Water Power Company, and Mr. Simpson went with me. I went there to appear before the Board, for the Washington Water Power Company, and to urge the Board to place a valuation upon its property which was not in excess of its true value, and then for assessment purposes to take the percentage of that value which was applied to other property in taxing and equalizing the property of the state. I did not contend before the Board that the decision of the Public Utilities Commission on the value of the property of the Washington Water Power Company was binding upon the State Board of Equalization. I cannot remember precisely what I said to the Board, but I presented that report to the Board. Mr. Van Dusen already had it, and apparently had analyzed it. I called the attention of the Board to the fact that the Commission had found the cost of reproduction of all of the property of the Washington Water Power Company, less depreciation, and that it was set out in what is shown as table No. 2 in that decision, and that that

should be taken by the Board, while they were not bound by it, in the absence of better evidence, that sum should be taken by the Board as representing the value of the property in Idaho for taxation purposes, in January, 1918. I did call attention to the fact that in that summary of the cost of reproduction less depreciation there were two or three items of non-operating property and stores and working capital which should be deducted, and that they should take that as the value, and then, for taxation purposes, apply the ratio which they applied to other property in the state, and which I knew to be not in excess of fifty per cent. I think nothing particularly further that is material to this controversy happened before the Board, except a general discussion. I recall very well that Mr. Van Dusen directed my attention to the fact that in this report the State Public Utilities Commission had, for rate-making purposes, apportioned to the state of Idaho a sum equal to \$3,800,000.00. I called his attention at that time to the fact that that did not represent the value of any property situated in the state of Idaho, and that it was not based upon an investigation or inventory or appraisal of property in the State of Idaho, but was a figure arrived at between the two commissions by compromise, based upon the use of the maximum demand in the two states and the apportionment then between the two states for rate-making purposes of the total value of the company, based upon

that maximum demand. I called their attention to the fact that in the opinion the Commission had expressly found that Post Falls could not begin to produce enough power to supply the Idaho demand, and that the Idaho demand in large part at least had to be supplied from the State of Washington. I was also interrogated, I think, by one of the members of the Board,—I can't remember which one—I think perhaps Mr. Van Dusen—about these overflow lands in the State of Idaho. There was a letter, which is attached to the complaint, of Mr. Wonacott's, asking that they should not attempt to assess those, but let him assess them. That was called to my attention, and I urged that that was a part of the operating property of the Company and should be included in the general assessment, and that the total sum at which those were carried and at which they had been carried into the report of the Commission, was the actual cost to the company, and that, as shown by that report, it was probably more than they were really worth. There was one other thing that I think—This Exhibit 13 was submitted to me before it was sent—that is, the report to the State Auditor—to the State Auditor, for the Board of Equalization. I went over it. This one and the office copy and the other were there together, and I went over it, and on page 23 it is true that a portion of that page was not answered, under my advice, because it was absolutely impossible—was then and is now—to undertake to

distribute in the form of that table the income and disposition account in Idaho; it can't be done.

CROSS EXAMINATION:

Mr. Simpson has not succeeded in doing that for the purposes of this trial in the way it is required in that formal report. All of the information in Mr. Simpson's statements is contained in this. The net income for the state of Idaho is not given in that report; it is a mere matter of computation; it could be procured in the same way.

I did not call the attention of the State Board of Equalization to the fact that the Public Utilities Commission had held that the value of the property of the Washington Water Power Company in Idaho was \$3,800,000.00, because the Public Utilities Commission did not so hold. I did not call the attention of the State Board of Equalization to the fact that in the opinion of the Public Utilities Commission that Commission stated: "From all the evidence, facts and circumstances surrounding this case the Commission therefore finds that the present value of the used and useful property of the Washington Power Company on the 31st day of December, 1917, used in delivering electrical energy to the citizens of the State of Idaho, is the sum of \$3,800,000.00." Mr. Van Dusen asked me about that, and I simply read it over to him, and assumed that he would understand it, as I did, and as I think anybody else does, that property used and useful in the State of Idaho and in the State

of Washington for the delivery of power to the State of Idaho, was so found by the use of the maximum demand. I made the statement before the Board of Equalization that the Public Utilities Commission had found the value of the property in Idaho to be \$2,400,000 and some dollars, and called their attention to the fact that it had so found. I tried to make clear to the Commission that the Public Utilities Commission had found that the apportionment of the total valuation of the property of the Washington Water Power Company of \$20,500,000, apportioned in accordance with the value of the physical properties located in each state, was \$3,587,500.00 in the State of Idaho, based upon the cost of reproduction new, and not upon the value at the date we were discussing. I cannot say that I called the attention of the State Board of Equalization to the fact that the Public Utilities Commission had found that the total value of all the property of the Washington Water Power Company in the State of Idaho and in the State of Washington was \$20,500,000.00. I presented this in such time as they gave me and as I was able to have. I tried to explain the effect of that report. I certainly tried to impress upon them that they should take the depreciated value of that property instead of what it originally cost. I certainly thought it was very fair that they should take the depreciated value covering a period back several years. Before the Board of

Equalization the years 1910 to 1915 were taken in fixing the value, and the war years, the high-priced years, were thrown out, in fixing the value of the property of the Company by the Commission. They said it would be entirely unjust to attempt to value that property on war prices, because nobody would build it and nobody would buy it on those prices.

MR. POST: You are somewhat mistaken about that, Mr. Gray. Originally it was from June 30, 1910, June 30, 1915, and then they took the prices up to 1916.

WITNESS: They left out the year 1917, I know, because it was a very high-priced year.

There were six methods proposed for the distribution of this property for rate-making purposes, between Washington and Idaho. The tabulation of those various six methods is set down there in Table 7, I can't say that I called attention to that table. I presented them with that report; I discussed with them the question of the cost of reproduction new, the depreciated value, and I also discussed before them this three million eight hundred thousand figure, which was arrived at by taking the maximum demand in Washington, the maximum demand in Idaho, and apportioning the total value of the property for rate-making purposes upon that. I asked the Board of Equalization to reach their full cash value of this property on the decision of the Public Utilities Commission so far as they

went into an investigation of the value, cost of reproduction new, and depreciation, of that property, the depreciated value. That is the figure that I used, the actual values as you have it.

EUGENE LOGAN, sworn on behalf of plaintiff, testified as follows:

DIRECT EXAMINATION:

I reside at Spokane, Washington, and am a civil engineer. I have prepared from the United States Geological Survey water supply papers the daily discharge of the Spokane River at Spokane. There is a gauge maintained down there by the United States Geological Survey, which gives the elevation of the water. The Geological Survey furnishes a reading rating table so that you can ascertain the flow in second feet for each elevation, and I have simply taken that table and those water supply papers and tabulated, instead of in heights, as shown in the papers, the number of cubic feet per second for each of the days in this exhibit, that is accurately done.

Said table was thereupon marked PLAINTIFF'S EXHIBIT No. 21.

MR. GRAY: I would like to offer that in evidence, for the use of Mr. Wiley, who will testify later.

MR. POTTS: We object to it as immaterial and irrelevant.

THE COURT: In itself of course it would be.

I assume it will be used by your expert?

MR. GRAY: Yes, by Mr. Wiley.

MR. POTTS: We contend that all the testimony as to value is irrelevant, so naturally this would be.

THE COURT: Overruled.

WITNESS: I have at different times made investigations for the purpose of ascertaining the difference in flow of the Spokane River at Spokane and at Post Falls. The flow at Post Falls is 750 cubic feet per second less at Post Falls than at Spokane.

9:30 A. M., Dec. 19, 1919.

JOHN S. SIMPSON, heretofore duly sworn, upon being recalled, testified as follows:

DIRECT EXAMINATION:

Q. Mr. Simpson, will you give me the cost of the buildings, fixtures, and grounds, and of the hydraulic power plant and equipment at Post Falls, as shown on your books?

MR. POTTS: Objected to as immaterial and irrelevant.

MR. GRAY: The reason I ask this question, between the appraised value in the Commission's report and the book value as carried there is just a few hundred dollars difference, and Mr. Wiley based his figures on the figures in the book.

THE COURT: He may answer.

A. The hydraulic power plant, buildings, fixtures, and grounds at Post Falls, cost \$171,425.24.

The hydraulic power plant equipment at Post Falls cost \$418,830.56.

Q. Give the same thing for the Monroe Street plant in Spokane.

A. Buildings, fixtures and grounds, Monroe Street plant at Spokane, \$101,493.00. The hydraulic power plant equipment, Spokane, \$292,900.00.

JOHN H. FLETCHER, sworn on behalf of plaintiff, testified as follows:

DIRECT EXAMINATION:

I reside at Seattle, Washington, and my profession is that of appraisal engineer. I have had 24 years of engineering experience. The last eight years, with the exception of the time in the army, has been devoted exclusively to appraisal engineering. Part of that time I have been employed as engineer for the State Public Service Commission of Washington, and the remainder of the time in private practice. I have made appraisals of water plants, electric light plants, street railway plants, and gas plants. I have a degree of B. S. and C. E. from Kansas State University. During the time I was with the Washington Public Service Commission I had occasion to investigate, examine, and make an appraisal of the property of the Washington Water Power Company in Washington and Idaho. In that work I acted under the direction of Mr. Phipps, who was chief engineer of the Public Service Commission at that time. Mr.

Phipps had charge of the entire work. I was his direct representative on the job. I did the detail work of this appraisal, as near as any one man could do it. At times I had as many as fifteen men employed under me. We took up the property in Idaho just the same as we did in Washington; we paid no attention, so far as our work was concerned, to the boundary line between the two states, except as we divided the property one to the other. The unit prices and the cost and the method of taking up the property was done in just the same manner for the Idaho part as for the Washington part. In valuing the property, Mr. Swendsen was detailed as the representative of the Idaho Commission on this work. He also had one assistant detailed and paid by the Idaho Commission. Outside of that, all the men were paid by the Washington Commission. It was my understanding that the Commission were jointly valuing this property.

Q. Mr. Fletcher, will you just state the method of arriving at these values?

MR. POTTS: We object to this testimony as immaterial and irrelevant, and not responsive to the issues in this case, because the plaintiff is precluded from inquiring into or in any way attacking or going behind the findings of the Public Utilities Commission of Idaho, which it has pleaded and which it relies upon in this case, and which it presented to the taxing body that made the assessment which it is now seeking to have set aside.

THE COURT: This is really in explanation of these findings, is it?

MR. GRAY: No, Your Honor. I am going to introduce the schedules and appraisement which was the result of the work of these gentlemen, upon which findings were made, the valuation of the property of the company. I have it here in book form, and I want to present the result of this work. It is material in going to show the value of the property. We have alleged what the value of the property is here.

THE COURT: Well, I can see your theory if you were introducing this independently as evidence of the value.

MR. GRAY: That is what I am doing.

THE COURT: But I understood you were asking him as to what facts were before the Public Utilities Commission.

MR. GRAY: Oh no, I think not, Your Honor.

THE COURT: Well, if it is understood that it relates to the actual values rather than to what was done before the Public Utilities Commission.

MR. GRAY: Oh yes; that is what I was trying to get at. I might be able, counsel, to very much shorten this. The appraisal which was made places a valuation upon all of these single items of property, and if you will concede that the depreciated value of that property was according to the actual appraisal made in the field by these representatives, was as shown in this opinion, and

that its costs of reproduction new was as shown in the opinion, I think we might very materially reduce this. That is what the evidence will bring out.

MR. POTTS: We are standing upon this opinion. We have so announced before, and we reiterate it now, admitting that everything in the opinion is correct. I am not going to go any further than that; that is far enough. I admit that the tables in there are accurate and correct and what they purport to speak.

THE COURT: I think, gentlemen, I will let you put in this evidence upon the actual value of the property. I may say to you that apparently it would be very difficult to give to it very much weight, because it wasn't before the Equalization Board, and these findings you say were before the Equalization Board, with the implied request upon your part, at least, that the Equalization Board accept them as evidence of value. I really have difficulty in seeing how you can escape that position, even if you wanted to. As I understand, you are not here trying to escape from the position, but you are contending only that the findings here do not mean what the defendants claim.

MR. POST: Well, we contended, as I understand it, before the Equalization Board, that they should take the table of depreciated values, and that is the part of it that their attention was called to, and that is what we contended should be consider-

ed for the purpose of taxation.

THE COURT: Yes. Mr. Gray so testified. Assuming that to be true, how would this evidence now, that is, this independent evidence of value, be material? Counsel for the defendants, as I understand, are willing to stand upon the proposition that the Board, if it was bound to take, or if it had the right to take, the depreciated value, as set forth in these findings. So that it would be a mere question of law perhaps as to whether the Board of Equalization are bound to take the depreciated value rather than the value as found by some other method.

MR. POST: Anyway, the testimony of this witness will simply, in final analysis, arrive at the same figures of depreciated value as that set forth in that report, won't it?

MR. GRAY: Yes, sir.

MR. POST: If that is understood, we don't need to waste time.

MR. GRAY: I think we should introduce it.

THE COURT: This witness, of course, couldn't testify as to what the Board did.

MR. GRAY: He could testify as to what he did. What I have here is a copy of the schedules of property, the valuations made by these engineers, which I desire to have placed in the record, and that is what I was calling this witness for. It was under his direction that they were made. These are the same figures that were before the Public

Utilities Commission of Idaho and the Public Service Commission of Washington when they passed upon this case, and if I can put them in without any further examination of the witness, it will save that much time.

MR. POTTS: Assuming that they have been identified and are what they are stated to be, we object to them as incompetent, irrelevant, and immaterial, and merely an incumbrance of the record.

THE COURT: Perhaps in order that you may make up your record, you might identify them a little further.

Said document was thereupon marked PLAINTIFF'S EXHIBIT No. 22.

Q. Plaintiff's Exhibit 22 is what, Mr. Fletcher?

A. I recognize this total sum here as the summary of the cost of reproduction of Idaho property, further divided through different counties, different lines, in its respective units. The summary is brought forward on the first page, and I recognize this summary as the cost of reproduction as of June 30, 1915.

(Continuing) That is the result of the investigation and appraisal and inventory which was made under the direction of Mr. Phipps and by me in charge. The different tables in there are the unit items and lines, etc.

MR. GRAY: I offer that in evidence.

MR. POTTS: We object to it as incompetent, irrelevant, and immaterial, and not responsive

to any issues in the case, and on its face an attempt to go behind the findings of the Public Utilities Commission as to the value of the property in Idaho, and substitute therefor a summary or some figures made by engineers.

THE COURT: It will be received, subject to the objection.

WITNESS: This is the inventory which was made and which I have heretofore testified to. Some years ago, under the direction of Mr. Gray, I made an inventory of the plant at St. Maries. I have a copy of that inventory here. The items of depreciation and the percentages of depreciation in Exhibit 22 are practically the ones used by me at that time, and which were adopted by the two commissions. The commission determined a per cent of depreciation of three per cent, as I understand it, which for all practical purposes is correct. In working out mine, however, I depreciated each individual item.

I made an estimate of reproduction cost of the St. Maries plant as of June 30, 1914. In making that estimate I went to St. Maries and went over the entire property with a notebook, and noted each pole, counted the cross-arms on it, went into their meter records, their transformer records, in fact I made a complete appraisal of that plant at that time going into every piece of property that I could find in St. Maries. I then returned to Spokane and made it up in detailed form as it is

shown here. I worked up prices and submitted them to Mr. Gray, and he looked them over and corrected some and asked me to correct others, and we came to the final conclusion that these prices were approximately correct, as near, probably, as anyone could determine at that time.

Said estimate was thereupon marked PLAINTIFF'S EXHIBIT No. 23.

Exhibit 23 is a detailed estimate and a summarized estimate of the reproduction cost of that plant on the 30th of June, 1914.

MR. GRAY: I desire to offer that in evidence.
CROSS EXAMINATION:

There must have been a difference in the cost of reproduction of this class of property, the St. Maries plant, as between June 30, 1914, and the second Monday of January, 1918. I went into the army at that time, however, and am really not competent to testify as to the percentage at that particular time. Since I came out of the army, as of the present time, I have advised myself of the general increase in the cost of reproduction of this class of property. I have not worked out the prices during the year 1918. There are many prices, and I have had no occasion as yet to work them out for that year. My general knowledge, however, is sufficient so that I know there was a very material increase.

A. J. WILEY, sworn on behalf of plaintiff, testi-

fied as follows:

DIRECT EXAMINATION:

I live in the city of Boise, and am a civil engineer by profession. I have had very nearly twenty years experience with hydro-electric plants, water power rights and plants. My first experience was in the year 1900, as chief engineer for the Swan Falls power plant on Snake River; then chief engineer of the Boise-Payette River electric power plant, on the Payette river; chief engineer of the Barber power plant on the Boise river; chief engineer of the Boston & Idaho Hydro-electric plant on the Payette river; chief engineer of the Idaho Consolidated Mines power plant on the Big Wood River; chief engineer of the Shoshone power plant of the Great Shoshone & Twin Falls Water Power Company, on Snake River; and of the Lower Salmon Falls power plant on the same river; chief engineer of the Southern Idaho Water Power Company's plant on the Snake River, at American Falls; consulting engineer for the first extension of the Swan Falls power plant on Snake River; chief engineer for the second extension of the same plant; and consulting engineer for the third extension for the Idaho-Oregon Power Company, of the same plant. I am familiar with water power developments in the State of Idaho, and with the value of water power rights. I have not known of any water power rights being bought or sold as an entity, within the last few years. I have been ask-

ed to make a study of the value of the flowage rights obtained by the Washington Water Power Company on Lake Coeur d'Alene and the rivers tributary thereto, what they call the Coeur d'Alene storage, and I have made such a study, and have an opinion as to the value thereof.

Q. What is it?

MR. WERNETTE: I object to that, if Your Honor please, as incompetent, irrelevant, and immaterial, and on the further ground that it does not tend to prove or disprove any of the issues in this case, and is trying to go behind the value that had been fixed and on which the plaintiff relied which was submitted to the Board of Equalization.

MR. GRAY: Do you concede that those rights are fixed in value at the sum of \$557,000.00, the cost?

MR. WERNETTE: The cost of what?

MR. GRAY: The cost of them; \$557,000.00 was so fixed by the Commission.

MR. WERNETTE: We admit, as stated before, anything that that decision of the Utilities Commission shows on its face. We don't make any objection to that whatever, and we rely on it.

THE COURT: I don't believe I quite understand the question, before you go further. By flowage rights, do you mean the rights to overflow lands, the flood lands?

MR. POST: Yes, by virtue of the Post Falls dam and controlling works.

THE COURT: You don't mean to include in that what the right to use the fall in its natural condition would be?

MR. POST: No, but what is the value that is obtained by virtue of their controlling works, the overflowing of the lake, of the lands surrounding the lake, and the rivers, which we paid out money for, what is the enhanced value by virtue of that, in other words, Lake Coeur d'Alene storage. Your Honor is aware that it has been contended in the past, and doubtless will be contended now, that that isn't tied up solely to Post Falls, that we get a benefit by virtue of that storage at Spokane and Little Falls and Long Lake, and that it wouldn't be fair to simply consider the Post Falls hydro-electric plant and the storage as an entity and determine that value alone.

THE COURT: Well, I think I shall let him answer, although again it would seem to me to be immaterial; but it may turn out to be material upon a thorough consideration of the case, and I prefer to have the record fully made up so that we will have everything in that is possibly material.

MR. POST: Do you remember the question, Mr. Wiley?

A. Yes. About \$400,000.00.

(Continuing) I arrived at the value by a comparison of the power derived from the Coeur d'Alene flowage as compared with the actual cost of other

plants, or other power sites, rather, in this locality, and in arriving at that I used the four other sites of this Washington Water Power Company on the Spokane River, the Post Falls site, the Spokane site, the Long Lake site, and the Little Falls site. I found that these sites were acquired over a long period of time, beginning about 1890 and extending up to about 1912, and they were acquired from many different owners, some by purchase and some by condemnation. I took the actual amount of power that could be developed during the low period of the river at each site and compared it with the cost of that site. At the Post Falls site I found that the property was acquired somewhere between the years 1890 and 1895, as near as I could determine, that the entire cost of the site was \$109,622.00, plus the grant of 375 horsepower, electrical horsepower, developed horsepower. I estimated the cost to the company of that 375 horsepower at \$68,066.00, making a total cost for the rights at Post Falls of \$177,688.00, which is at the rate of \$31.90 per horsepower developed. I wish to correct the date of acquisition. The date of acquisition of the Post Falls site was between 1904 and 1906. The date of acquisition of the Spokane site was between the dates of 1890 and 1895. And at Spokane, at the low water period, 25,650 horsepower can be developed. The cost of acquisition of the rights at Spokane was \$553,644.00, plus the grant of 400 electrical horsepower, to several different parties. I esti-

mated the value of that, or the cost of that to the company, of that 400 developed horsepower, at \$41,059.00, making a total of \$594,703.00 for the total cost of the rights at the Spokane site, or at the rate of \$23.18 per horsepower. I will explain that the figure that I am using, 25,650 horsepower, is the ultimate power that can be developed at Spokane when the full head available at the site is used. There is only half the head being used now. I find that the Little Falls site was acquired about between the years 1906, and 1908, and that it will develop at low water 17,630 horsepower; that the total cost of the rights at this site was \$102,842.00, or an average cost per horsepower of \$5.83. I find that the Long Lake site was acquired between the years 1910 and 1912, and that 41,620 horsepower can be developed at this site at low water, continuous horsepower; that the total cost of the rights at this site was \$1,000,488.00, or a cost per horsepower of \$24.04. That the total developed horsepower at low water at all of these sites will be 90,470 horsepower. That the total cost of the acquisition of these sites was \$1,875,721.00, of the four plants, not including Coeur d'Alene Lake, at an average cost per horsepower of \$20.73. I made a study of the power that can be developed from the Coeur d'Alene storage at the various sites. I find that in the record of sixteen years previous to the building of the Spokane plant, after which time the records have been affected by the storage

at Coeur d'Alene Lake and cannot be used conveniently, I find that in this period of sixteen years there were seven years when the storage rights and storage at Coeur d'Alene Lake would have contributed nothing at all to the power that could be developed at the four sites, the normal flow of the stream during those seven years being sufficient to fully supply the low water demands. I find that the maximum year of storage requirements was in 1904, when, for a period of 125 days, beginning August 28th and ending December 30th, the storage at Coeur d'Alene Lake would have contributed to the Post Falls site 2240 horsepower; to the Spokane site 6280 horsepower; to the Long Lake site 7330 horsepower; and to the Little Falls site 3100 horsepower, making a total of 18,950 horsepower. I will explain that the power at the Spokane site is that which could be developed by the flowage when the full head of 144 feet is utilized there, the same as was used in determining the cost per horsepower of the rights to various sites. Applying the unit cost, average unit cost of \$20.73, per horsepower, at the other sites, to the 18,950 horsepower contributed by that storage, to the four sites, the other sites, I find that the value of the Coeur d'Alene storage would be \$392,834.00, or approximately \$400,000.00. I will explain that while this amount of power could only be contributed to the sites by the Coeur d'Alene flowage in one year out of a sixteen-year period, to the extent

of 18,950 horsepower, and not in any sense continuous flow, it seemed to me of such value to the system, on account of this insurance, that I gave it the same value as if it had been a continuous flow and could be used every year for all the year. I consider a fair value of Lake Coeur d'Alene storage to be \$400,000.00. The total of the four sites, including the Coeur d'Alene storage, would be \$2,275,-721.00, and the total horsepower 90,470. That is about \$25.00 per horsepower. I consider that, for all of it, lands and water rights, as a fair figure. I cannot see any peculiar value of the Post Falls site over any other site of the Company, Little Falls, or Long Lake, or Spokane, by virtue of its location or by reason of any other fact, without respect to the storage.

C. O. SOWDER, sworn on behalf of plaintiff, testified as follows:

DIRECT EXAMINATION:

I reside at Coeur d'Alene, and am Clerk of the District Court, Auditor and Recorder; as such I am also clerk of the Board of County Commissioners. I have with me the proceedings of the Board of County Commissioners of Kootenai County, sitting as a Board of Equalization, for the year 1918. From Journal "H" of Kootenai County I can state how many petitions for a change in assessed value of property were filed by taxpayers that year. On this slip there appear to

be nine, I think, which were acted on. The total amount of reductions made in those cases was \$2,820.00. I have not been able to find that any changes were made by the Board in the assessment roll for that year except where petitions had been filed asking for a reduction. So far as I have been able to see from an examination of the records, that constituted the changes in the assessment roll made by the Board of Equalization.

CROSS EXAMINATION.

I made a careful examination of the records both at the first meeting of the Board of Equalization and at the subsequent meetings; I followed through day by day from each adjournment to the other. I found no notices given to taxpayers of proposal to increase their assessment, or any action thereon.

MR. POST: I would like to put in a record of the date when these two counties accepted the checks that were tendered, just for convenience. It may have some bearing on the question. There was an order that was made, but I just want to get the fact.

MR. POTTS: The order was made on the 27th day of May, 1919, in this action against Kootenai County; I don't know when it was cashed.

THE COURT: Don't the checks show when they were paid?

MR. POST: If you can figure out what that date is—5-31-19—that is paid in Spokane marked paid there. Now as to Shoshone County.

MR. WAYNE: The order in the Shoshone County case was made on the 31st of May, and the money receipted for on June 4th, and cashed on June 7th.

JOHN BAER: sworn in behalf of plaintiff, testified as follows:

I reside at Lewiston, moved there a year ago last spring. My business is buying stock for the Armour Company. I am acquainted with the values of live stock, such as cattle, hogs, and sheep. I was engaged in that business in January, 1918, at Lewiston. I wasn't living there then; I was in Cottonwood at that time. I had lived in Cottonwood at that time about twelve years. I lived in that part of Idaho about eighteen years, and dealt in stock during all that time. The cash value of common cattle, mixed bunches, per head, on or about the second Monday in January, 1918, about that time, run fifty, sixty, dollars per head; choice, seventy, owing to grades and quality. The value of common milk cows per head at that time in Idaho run seventy-five to a hundred, or up, owing to how good they are. During the twelve or more years that I have lived in Idaho I have dealt in hogs and am familiar with the cash value of hogs during that time, and familiar with the cash value of hogs here the second Monday in January, 1918; I couldn't tell exactly without looking up purchases, but I could give a close figure. In January, 1918,

stock hogs, run sixteen to eighteen cents; stock, fifteen, sixteen, seventeen, owing to quality and kind. During my residence in Idaho I have been familiar with the values of sheep. I have handled sheep. I was familiar with the values of sheep on or about the second Monday in January, 1918; they didn't change much during that month. The value of common sheep in Idaho, 1918, breeding ewes, would depend; fourteen dollars up, some bunches twenty, twenty-two, up. Most sheep changed hands—Stanfield Sheep Company—at sixteen to eighteen, higher, some others higher, per head; that is breeding ewes. Other common sheep in January, 1918, wouldn't run so high per head; ewes and wethers run, owing to weight, owing to how good they were, eight to ten dollars, some better.

CROSS EXAMINATION:

I couldn't tell without checking up my shipments during the year 1918, or in January of 1918, exactly how many sheep I did ship that month. The territory I cover in my purchasing of sheep differs different times of the year. I buy some in Washington. The weight of sheep varies quite a bit. In mutton the valuation of the sheep depends upon the weight, but when it comes to breed ewes it is quality. I could not state how many sheep used for breeding purposes were sold during the year 1918; I don't have a check on that. I fix the value of sheep used for breeding purposes, owing to the

way they sell, what they are selling for. I have not bought or sold any lately. I have bought a lot of sheep, not breeding, bought ewes, but for packing ewes for slaughter. The actual value of sheep for breeding purposes which I gave is based on actual sales; sales have been made right here, all up and down, all through here. I buy my cattle in different places different times of the year; buy in Washington. It is not a fact that my purchases of stock have been as much from Washington as from the State of Idaho. I couldn't tell you how many head of stock I purchased during January, 1918, without checking up the books. It is pretty hard to approximate it, how many I did run out that month, without looking it up. January, 1918, was a pretty heavy month, up to the middle of February; my shipments run from one to two train loads a week into winter time, chopped off to less. Couldn't tell you until I got the books at the house. I could get that all right. The price paid by myself for stock purchased is fixed somewhat according to weight, quality, and condition of the animals, but mostly fat stuff. The price paid by me for the purchase of stock would be a criterion of value of other stock in this country. All the stock in this country at that time were not fat, heavy weight. Some of the stock in this country that I did not purchase was of the same standard of value as that which I purchased; some was not. Any fat stock and in the same class as that I was buying was

worth the same as the stock I bought at that time. It would be hard to get at who owned it; Carstens-Fry and the other packers all buying about the same; lines vary a little at different times, different shipments. Not all of the other stock in this country was of the same condition as what I bought; it would be pretty hard for me to say how much of it was; anything the packers buy is pretty much the same price. I don't know how much the packers bought. I do not know how much stock in this country was of the same value as that which I bought. In my business, milk cows run strong; good milk cows quite a bit stronger than common cows, sell stronger. We don't handle milk cows; that is out of our line.

RE-DIRECT EXAMINATION:

I couldn't give the exact figures as to the value of three-year-old fat steers in January, 1918, without looking it up, but beef in January, 1918, different during the month, different different places and different butchers. We had some beef cost as high as ten cents, good fat steers. Then common steers run down to seven or eight. That is hard to get at without checking up. These fat steers, take them by weight, some sold during January, twelve to fourteen hundred pound steers, sold at ten cents, they run up; but you asking about common cattle, you know that is hard to get without checking up cattle. You take 1918, six cents catch is pretty close, wouldn't miss it much.

RE-CROSS EXAMINATION:

Q. How many counties do your operations cover, Mr. Baer?

A. That's hard to get, owing to where stock is. My work takes me up in Seven Devils country, up Clearwater—the "High-Line" handles most of our stuff, big end of it.

(Continuing) Some cattle raised here are owned by Washington people; my purchase would cover those cattle the same as any other; and I get some from Washington. This year I got from Asotin, sometimes get from Pomeroy, different places.

WALTER HAROLD BRISTOL, being duly sworn, (by deposition) testified as follows:

DIRECT EXAMINATION:

I reside at Lewiston, Idaho, and have resided here eleven years. My business has been the purchasing of livestock and the sale of dressed meats, for the entire period of eleven years. I have dealt in sheep and cattle and hogs. I was familiar with the cash value of livestock in January, 1918, say the second Monday of January, 1918. I purchased livestock in January, 1918, and the subsequent months of 1918 I dealt in livestock. I was familiar with the cash value of livestock on or about the second Monday of January, 1918.

Q. What was the cash value, about the second Monday of January, 1918, of common cattle, on an average? I mean the common run of cattle, not

extremely fat cattle, not extremely poor cattle, the common run of cattle.

A. The average value of cows at that time was approximately sixty dollars per head.

(Continuing) I mean the average value of range cows, for this immediate vicinity. On that date the value of common milk cows per head was seventy-five dollars. During the time I have lived here I have bought both stock hogs and fat hogs continuously. On the second Monday of January, 1918, I would say that the cash value of stock hogs per pound would be from twelve and a half to thirteen cents, depending on the weight; that is live weight. The heavy stock hogs would be worth more, while the lighter hogs would be worth the lesser price I have mentioned. I paid fifteen cents per pound for fat hogs at that time; they were worth from fourteen and a half cents to fifteen cents per pound, depending on the quality. Breeding ewes, which is the common sheep on the range, on or about the second Monday of January, 1918, were selling at about twenty dollars per head; that was the value. Yearling wethers and yearling ewes were selling for ten dollars per head, and worth that.

CROSS-EXAMINATION:

My place of business is at 204 Main Street, Lewiston. I have a packing plant in Clarkston, Washington. Part of the stock I buy is Washington stock. The book to which I referred in answering

the questions of plaintiff's counsel is the record I paid for livestock during those months. My book-keeper made that record. All my answers, excepting the actual price I paid for fat stock, was based on personal experience; the answer as to what I paid for fat stock based on record I have here of what I paid. I cannot answer as to how many cattle I bought in this country during the month of January, 1918, without referring to this record; I don't remember; and the same thing with the hogs. I can give you this record, but I don't know otherwise. I can't tell you how many sheep I purchased during the month of January, 1918, without referring to the record, the exact number. The value I fixed on beef, pork, and sheep, during the month of January, 1918, is the average market value that I have been compelled to pay through competition. The beef which I purchased was in good condition for slaughter, but I haven't quoted a price on beef. The pork which I purchased at that time was mostly stock hogs and fat hogs. The price I paid for stock hogs was twelve and a half to thirteen cents, and for fat hogs fourteen and one-half to fifteen. The price paid for beef, pork and sheep depends on the condition they are in.

Q. You did not pretend to say, Mr. Bristol, that all the other sheep, pork, and beef in this country or the State of Idaho were in as good condition or worth as much money as that which you purchased?

MR. McNAUGHTON: Objected to as immaterial.

THE COURT: Overruled.

To which ruling of the court the plaintiff then and there excepted, which exception was by the Court allowed.

A. No, I don't think they are worth as much as those I purchased, but I haven't quoted a price I paid for those I purchased, on cattle.

Q. Then is it not a fact, Mr. Bristol, that the cash value of the different animals you have given is not a criterion for the value of livestock in the State of Idaho?

A. No, I don't think it is, the way I have answered the questions.

MR. McNAUGHTON: Let me see that last question.

(Question read.)

A. I think it is the way I have answered the questions. I misunderstood the question.

Q. You mean to say, Mr. Bristol, from what business you have had in the purchase of livestock during the month of January, 1918, your experience is such you can place a value on the livestock within the whole State of Idaho?

MR. McNAUGHTON: Objected to; the question is not clear. You mean the total amount in Idaho or just average values?

MR. REED: I think the question is clear enough.

A. I do.

Q. And you can do so without seeing it?

A. I can do so without seeing all of it.

(Continuing) My place of business is at 204 Main Street, Lewiston, Idaho. My slaughtering plant is in Washington; that is the place where the stock I purchase is slaughtered. My business is not an incorporated business; I own it individually. As to the capacity of my plant, I can slaughter approximately a hundred head of cattle and two hundred head of hogs per month. I cannot tell you, without referring to this record, what I slaughtered during the month of January, 1918. My monthly output is approximately seventy-five head of cattle and one hundred fifty head of hogs. I happened to become a witness in this case because the gentleman asked me if I could tell him the approximate price of the livestock that I had been purchasing; that was some time ago; I don't remember just when, and I volunteered to give my testimony. I have no interest whatever in the Washington Water Power Company or any of its subsidiary corporations. During the month of January I think I fed seventy-five per cent of the stock I bought. I probably paid taxes on all the stock I purchased in Asotin County, if they weren't slaughtered before the first of March.

RE-DIRECT EXAMINATION:

In January I paid, for fat cows about seventy-

five dollars per head, and for fat steers about one hundred dollars.

C. A. McDONALD, sworn on behalf of plaintiff, testified as follows:

DIRECT EXAMINATION:

My name is C. A. McDonald. I live at Coeur d'Alene and buy logs for the Rutledge Timber Company. I have been engaged in that business for four years, and was so engaged in 1918. The Rutledge Timber Company is a large sawmill company operating near Coeur d'Alene. Most of the logs that I buy I get around the lake here. In the spring of 1918 white pine logs were worth sixteen and eighteen dollars per thousand; yellow pine and mixed logs were worth twelve and fourteen dollars, delivered anywhere in the lake.

CROSS-EXAMINATION:

I was working for the Rutledge Timber Company during the month of January, 1918. I don't know whether I was buying logs then or not; I have bought ever since I have worked for them, and the company buys logs all the time. The price I have given was the general price around the lake. Of course, if people could get them cheaper than that, I suppose they would try and do it, but that is what we paid. I don't know what the fact is as to whether or not white pine logs around the lake were bought for less money. I don't think yellow pine and mixed logs were bought for less than

what I mentioned; in fact, I know they weren't, because we were all sparring for them, and the best fellow got them.

Q. What is the fact as to whether or not the big companies especially were short of logs at that particular time during the year 1918?

MR. GRAY: I think that is immaterial.

THE COURT: Overruled.

A. I don't know. They might have been short, for all I know.

(Continuing) I don't think my company was short; they were only running one shift, I know. The price that I have fixed as the reasonable value of the logs pertains simply to logs that were bought here at the lake. I do not know what the fact is as to whether or not logs in other places throughout the county were bought for considerably less. I know in a general way about what white pine logs was worth most anywhere around in the county, but the lake was where I was operating. All the logs throughout the other part of the county would have to come to the lake. I don't think logs were bought and manufactured into lumber throughout the county except those that were bought here in the lake, except the St. Maries mills, those mills, of course, up there, wouldn't have to come down to the lake, their timber.

MR. GRAY: They are not in this county.

WITNESS: No; that's right.

(Continuing) I don't know the price of yellow pine and mixed logs except what was being paid here at the lake. The fact is that a great many logs were bought and sold throughout the county in other places except on the lake, and I don't know anything about that price.

H. B. LUE (deposition), sworn on behalf of plaintiff, testified as follows:

DIRECT EXAMINATION:

I reside at Twin Falls, Idaho, and have resided here a trifle over twelve years. I am an auctioneer, general auctioneer, livestock, farm, and real estate. I have been an auctioneer in this state for twelve years, and as such I have frequently sold livestock at public sale, cattle, sheep and hogs. In my business as an auctioneer I consider that I am familiar with the values of livestock, and have been familiar with the values of livestock for the past twelve years in this vicinity. I was familiar with the prices being paid at public sale for livestock in January, 1918. I know the cash value of common cattle, stock hogs and common sheep in this country on the second Monday of January, 1918; I consider that the prices at sales would be their cash value. I conducted sales during the month of January, 1918, in this vicinity, of livestock. At sales at that time common stock cattle brought from sixty to seventy dollars per head. That is as close as I can come, and I will qualify that by saying that the common

stock cattle at sixty dollars would be low, and possibly the seventy dollars would be high, while there might be now and then smaller bunches that would reach beyond and possibly a little below, but as near as I can come to it, from sixty to seventy dollars per head. I sold hogs at public sale in this vicinity during the month of January, 1918. As to the cash value of stock hogs per pound on or about the second Monday of January, 1918, I will have to qualify my answer to that by stating that that would be largely on my judgment as to the weight of the hogs. While selling I would form my own opinion of what the hogs would weigh, and about what they would average per pound at that time, speaking, of course, of the selling quality. Hogs were high, and the fat hogs would probably average fourteen or fifteen cents per pound, inasmuch as stock hogs were scarce. I conducted public sales of sheep in this county during the month of January, 1918. From my experience in the sale of sheep, I would say that the cash value of common sheep per head in this county as of the second Monday of January, 1918, would range from eighteen to twenty-eight dollars per head. In my business as auctioneer I sold milk cows during the month of January, 1918, and from my experience I would say the cash value of milk cows per head on the second Monday of January, 1918, was from seventy-five to one hundred and fifty dollars each.

CROSS-EXAMINATION:

I base my testimony on sales that I individually held. There were quite a few public sales held in January, 1918; as I remember, I had about ten. January is really a slow month for public sales, but as I remember I had about ten. I could tell you by looking at my books. Sometimes I imagine there is a scarcity of stock in this county, but until this year I have not noticed it, any more than one year with another, you understand. They usually begin to pick up in the spring; along in January the prices will begin to advance; there will not be much change. Generally, I realize, there has been a scarcity of stock compared to the amount offered. Up until the last two or three years there has not been much more hay produced in this vicinity than there was stock to consume it, as a rule. During the past three or four years the price of hay has been high. It is true the price of everything has been high the past few years, but what I meant to say, there was no great amount of hay shipped out; most of it was consumed here. Of course there was considerable stock shipped in here to consume it. That was in the winter of 1918. I presume there was no more feed produced here than there was stock to consume it during the fall and winter of 1918. There always has been livestock brought in here. During the winter of 1918 hogs especially were scarce in this vicinity; in the fall they shipped out a great many to the serum institute. There was

a scarcity of hogs and a good demand for them, and as that demand continued naturally the price was high. The prices of hogs, stock, or cattle, fluctuate according to market, but on the dairy stuff it did not fluctuate so much; the prices on dairy stuff are more staple, but on other classes of stock considerable fluctuation according to market. The prices on livestock in the winter of 1918 were very high; prices had increased considerably over preceding years. We looked for quite a demand that spring for stuff to go on the range. Anywhere that year prices of cattle, hogs, and sheep were higher than they had been, more especially of sheep. They had been increasing in price even before we entered the war, because of the European war. In the winter of 1918 or about that time the prices of livestock were just about as high as they have been, up to the present; up to that time that was the high prices; of course they have gone higher since. As to some kinds of livestock purchases at my public sales prices were much higher than the market prices, that is to say, for stock hogs they were paying higher prices than for fat hogs. It was not particularly true that I procured higher prices for individual animals at public sale than the average run of prices for such animals on the market. The serum people were in here at that time buying what we called serum stock, small hogs to go to the serum plant. I would say that the public sales rather established the price in this vicinity; in this vicinity

a man who has a bunch of stock to sell generally fixes the price of sale to the purchaser by the prices they brought at the public sales; I have noticed that quite frequently. In January, 1916, I got my highest price for dairy cows, that is, for a common year. The price of livestock bought at the public sales during the fall of 1917 and the winter of 1918 were quite a little higher than they had previously sold for in this vicinity. The prices had not advanced so much during the period of two or three years before the winter of 1918; they were just beginning to advance in the winter of 1917. That is when so many millions were made on sheep. Prices began to advance in the winter of 1917 and went up rapidly from then on. It is my opinion that the price of sheep was directly connected with the increase in the price of wool. It is quite evident that the price of wool has gone up. Since we have bought clothing down here we wonder what they have done with the wool. I never heard of such prices before as were put on sheep in 1918.

W. W. BROWN, (Deposition) sworn on behalf of plaintiff, testified as follows:

DIRECT EXAMINATION:

I reside here at Grangeville, and have resided here for twenty-five years. My business is banking, and I have been in that business all that time. In my business I have kept close check on the values of livestock in this community. We have loaned

quite extensively on livestock. I think I am familiar with the values of livestock generally, and was familiar with the values of livestock here on the second Monday of January, 1918. The value per head of what might be termed common cattle, general run, on the second Monday in January, 1918, average ages, just about as if a man raised them, we would consider sixty dollars, for a band of cattle of different ages. Of course this is not a dairying country, and the average value of milk cows is not as high as in some places, but I would consider the average value of cows that are milked at about \$75.00. I was familiar with the value of stock hogs in January, 1918; their value on the second Monday of January, 1918, would be fourteen cents. I was familiar with the value of sheep in January, 1918. Taking all ages, and breeding sheep, yearlings, up to nine or ten years old, I would say the value of common sheep, such as would be in the country on and after the second Monday of January, 1918, per head, would be about \$15.00. I would say that the average value of work horses on the second Monday in January, 1918, would be \$100.00.

CROSS-EXAMINATION:

Any values I have given pertain to this immediate vicinity. I arrived at the value I have placed on common cattle by the sale of the cattle. I don't think it is a fact that a band of cattle, if they are the same class of cattle, have more value than a few,

one or two or three or four, insofar as the sale value is concerned. I might say that I think a band of cattle, that is, a large bunch of horses or cattle, will average a better grade than the smaller bunches. My price was the average price, including, at that time of the year, coming yearlings in the spring, but not winter calves. The yearlings, or coming yearlings, while classed as common cattle, would be of much less value than the two-year-olds, or three-year-olds. For beef purposes I take it that cattle would deteriorate, steers, after they are five; cows would deteriorate probably after they are ten years old. My idea is based on a band of cattle—I refer particularly to steers—where the oldest steers are four years old and the youngest are coming yearlings. Of course the cows are different in that respect. Cows for breeding purposes do not begin to deteriorate as early as a beef steer. The steer, after he is five, deteriorates in price because he gets rough and does not dress out as well. Cows for breeding purposes in this country when three years old and past sell for about the same; they begin breeding at two years, second calves at three. In my experience I have not bought or sold cattle. A large amount of our loans are on cattle, livestock. We probably carry \$200,000.00 in loans on cattle and sheep. Sometimes, but not always, I personally look over the bands of horses. In some cases I make loans without inspecting the cattle and depend upon the integrity and reputation of the man with whom

I am dealing. I have different ways of arriving at the value of the cattle, sometimes one way and sometimes the other. We figure to loan money to buy cattle—we know what they are when the borrower buys them; and we sometimes get the neighbors. We are familiar with the sales. The people bring their cattle out from the ranges to the railroad here, and I see them, the class of cattle, and the prices they get for them. The average weight of the work horses would be about 1300. My answer fixing the value of horses would not apply to the common term "cayuses," it would not apply to range cayuses. In these days there are not many range horses in this part of the country. There was a time when there was a large number. It would not change the average. I have no statistics from which to ascertain the actual number here in January, 1918; I only know they are scarce. I don't know how many work horses were here in January, 1918. The value I have fixed on common horses would apply only to draft or work horses. I should estimate that probably ten per cent of the horses in this county are range cayuses, or was at that time. Sheep are the only migratory stock in this county, and in January there are none of that class; they are taken on the range in the spring and off in the fall. Most of the sales of stock here are made in September and October and November. My dealings with stock extend through the year; but I might say there are frequent auction sales, which

we often attend and buy notes, and are familiar with what they sell at auction; that is all kinds of livestock.

Q. Now, the values that you have placed on this stock, would that particularly pertain to the month of January, 1918?

A. No.

MR. McNAUGHTON: Do you understand the question?

A. Yes, sir.

MR. McNAUGHTON: The values you gave me were values pertaining to January, 1918, were they?

A. Yes, sir.

S. L. REECE, (Deposition), sworn on behalf of plaintiff, testified as follows:

DIRECT EXAMINATION:

I reside at Pocatello, and am in the banking business; I have been in that business in the State of Idaho about seven years. I am president of the bank at this time. In my business as a banker I have business relations with regard to livestock; we loan a great deal of money on livestock. I am fairly familiar with the sale of livestock. I was pretty well acquainted with the values of livestock, say cattle, sheep, and hogs, in January, 1918, in this part of the state. In my business as a banker I have attended public sales of livestock in this part of Idaho, for the purpose of clerking the sale and

taking notes. The cash value of two to three year steers per head in January, 1918, would average between sixty to seventy dollars; heifer stuff, two to five years old, would average between fifty to sixty dollars per head, including cows. Of course a good grade of milk cows would average from seventy-five to a hundred dollars. As to the cash value of the average stock hogs on or about the 2nd Monday of January, 1918, of course, you will understand that stuff in the way of 250 to 260 pounds is worth quite a little more than the average stock. Unless it is a very good grade of stuff, I would say perhaps twelve or fourteen cents a pound; that would be twelve or fourteen dollars a hundred, live weight. The cash value of sheep in this country on or about the second Monday in January, 1918, common sheep, common ewes, cross-breed ewes, two to five years old, would be worth probably sixteen or seventeen dollars per head; the major part of the sheep in the country, cross breed sheep and cross breed ewes, of the age of five years, were selling from sixteen to eighteen dollars per head.

CROSS-EXAMINATION:

I am now connected with the Bannock National Bank of Pocatello, and my position with that bank is president, which position I have held for about twelve months. Prior to the time I became president of the bank, I was cashier of this bank for about twelve months. Prior to that time I was cashier of the First National Bank at Blackfoot for five

years. I have had two years of banking experience in Pocatello and five years in Blackfoot, in Idaho. Prior to that time I was not a resident of Idaho. During my seven years in Idaho banking has been my principal business. In giving prices on the various kinds of livestock I referred to transfers of livestock. We have buyers come into Pocatello and buy stock that is fed for the market. In giving the prices to which I have testified, I have reference to the prices paid to the stock men through the country. We do not have very much dealing with the people who purchase stock for the market. I cannot give you the exact market price of cattle, hogs, or sheep, at the time about which I have testified. The prices that are paid for cattle, hogs, and sheep fluctuate from time to time. The question of what cattle are worth depends a great deal upon general market prices and also local conditions. Without looking up the market bureau for that time I cannot give you the exact price for steers from two to three years old, in Pocatello and vicinity, on the second Monday of January, 1918.

Q. Do you know what the market price in this city and vicinity of the second Monday in January, 1918, for heifers between two and three years old?

A. Fat stuff?

Q. Yes, such as would be sold on the market?

A. I know what they would have been sold for from one rancher to another.

(Continuing) Not very many sheep were shipped to the market in January; I only know what they were sold for from one sheep man to another. As well as I remember, the market price of hogs such as would be sold on the market, on the second Monday of January, 1918, was something between twelve to fourteen cents a pound; I do not remember exactly. There has been quite a change in prices of cattle, hogs, and sheep in this vicinity between the second Monday of January, 1918, and the present date. I am testifying as to the prices in January, 1918. I have not consulted any data to refresh my mind as to the prices at that time. The reason why I recall the prices of these various kinds of livestock is because I inspected livestock for a number of loan companies, and have for a number of years. I can come very close to remembering the price of these livestock during any particular year.

Q. What was the price of steers two or three years old on the second Monday in January, 1917?

MR. McNAUGHTON: Objected to as immaterial.

THE COURT: Overruled.

A. I presume fifty or sixty dollars a head.

Q. What was the price of steers from two to three years old on the second Monday in January, 1919?

A. How much did they weigh?

Q. You have not heretofore qualified your an-

swers as to what the animals weigh. I am asking the same questions as you have heretofore answered.

A. I would like to know what they weigh.

Q. Can you answer the question?

A. I can tell closer if I knew what the steer would weigh.

Q. Is it necessary for you to know what they weigh in order to give a reasonably accurate opinion as to what their value was?

A. Well, it would be a little easier to tell.

Q. Well, is it necessary that you know what the animals weigh in order to give an opinion?

A. Well, we have taken it for granted that steers are in condition and fairly good flesh.

Q. You took that for granted in fixing the prices that you did? Now a great many cattle are not in good condition and good flesh in the month of January in any year?

A. Some are not.

Q. Going through the winter tends to make them poor and in bad condition, doesn't it?

A. According to how they are taken care of and fed.

Q. What kind of a winter was it in the vicinity of Pocatello in 1918—the winter of 1917-1918?

MR. McNAUGHTON: Objected to as immaterial.

THE COURT: Overruled.

A. 1917 very hard; 1918 very open.

Q. I refer to the winter of 1917 and 1918.

A. Can not compare two in one answer.

Q. The winter commencing in the fall of 1917, following the fall of 1917, and going through the months of January, February and March of 1918.

A. Very mild and open winter.

Q. Was stock permitted in this vicinity to run on the range during that winter? A. Some cattle men ran their stock on the range up until February.

Q. Did they feed prior to that? A. No, sir.

Q. Stock that runs on the range during the greater part of the winter is apt to be in very poor condition, is it not?

A. According to the range.

Q. Well, in such range as there is in this vicinity; unless stock is fed, and is permitted to run on the range is apt to be in poor condition, is it not?

A. In the vicinity of Pocatello, yes, but we had a great deal of cattle up by Idaho Falls, and the west there, and they got along nicely up until February.

CHRIS A. HAGAN (Deposition), sworn on behalf of plaintiff, testified as follows.

DIRECT EXAMINATION:

I reside in Moscow, Idaho, and have resided here for thirty years. My business is the buying of livestock, a meat market, and a packing business; I have been in that business about twenty-four years. I am and have been for the last twenty-four years in the business of livestock here. I am

pretty well familiar with the surrounding country. I was familiar with the value of livestock on the second Monday of January, 1918. It is hard to say what would be the average cash value per head on common cattle on the second Monday of January, 1918, for the common run of cattle in Latah County is different to that in other parts of the state. In Latah County the common run of cattle that you would find in this county on the second Monday of January, 1918, excluding milk cows and thoroughbred cattle and excluding everything under one year, and including everything from coming yearlings on up to as old as you would find them in this county, I would say would be worth fifty dollars. I was familiar with the cash value of stock hogs in Latah County on the second Monday of January, 1918. In my business as a packer, I have handled both cattle and hogs. I would say that the cash value of stock hogs on the second Monday in January, 1918, would be about fourteen cents, to the best of my recollection. The cash value of milk cows per head on the second Monday of January, 1918, was about \$60.00. I would say that the cash value per head of common sheep, such as you would find in this county, on or after the second Monday of January, 1918, would be seventeen dollars. In my answer as to the value of stock hogs at fourteen cents per pound, I mean live weight.

CROSS EXAMINATION:

I would say the price of common cattle in this county in January, 1916, was about fifty dollars. I arrive at the value of the stock to which I have testified on the basis of what the market value is and what it can be sold for on the open market. I would not answer to how much stock was sold in January, 1918; of course I have no way of knowing that.

Q. What would you say the market price of these animals is? A. I would say the supply to the man.

(Continuing) I am guided by the market prices from Spokane. My estimate of the value of these animals is based on the market price of livestock in Spokane and what I have to pay for them here. I did not buy any common cattle here in January, 1918. I could not say how many stock hogs I bought without looking at my records; possibly about seven or eight hundred hogs. I could not tell you without referring to my files how many sheep I bought in January, 1918. I do not know what milk cows were assessed at in this county. I did not pay taxes on cattle in 1918.

Q. You say your business is buying and selling?

A. We never carry livestock.

(Continuing) I don't know what milk cows were assessed at per head. I do not know how many sheep there were in the county and sold in

the county in January, 1918: I do not know how many cattle of common stock there were in the county in January, 1918. A yearling would not be worth as much as common stock; that is, a yearling would not be worth as much as a three-year-old. My answer to the question of Mr. McNaughton included yearlings. I do my buying mostly in Latah County; my operations are confined to this immediate vicinity.

MR. GRAY: Mr. Potts, yesterday you were using the 1917 report of the State Board of Equalization. I should like to offer that in evidence. You were asking something about some values in this county in 1917, and it is all shown in there.

MR. POTTS: I don't think we have any objection.

Said report was thereupon marked PLAINTIFF'S EXHIBIT No. 24.

MR. GRAY: There are four other exhibits here which I desire to offer in evidence. I don't know that Your Honor will receive them. I desire to offer the transcript of proceedings and statement in regard to the five hundred thousand dollar bond issue of the Nampa Highway District, Canyon County; a general statement of bonds proposed to be issued by the city of Twin Falls, Idaho, made by the clerk of each of these municipalities; the official statement regarding municipal bonds of Idaho Falls, Bonneville County, by the clerk of that city, under his seal; and a statement of bonds of Bing-

ham County, issued by the auditor. These are in line with Mr. Eagleson's advertisement, which you ruled out. I offer those for the purpose, Your Honor, of proving the allegations in the complaint, the fact that property in this state generally is assessed at not to exceed forty or fifty per cent, as a matter of common and general knowledge.

MR. POTTS: We object to each of these offers, on the ground that they are incompetent, irrelevant, and immaterial, and not properly identified, and their genuineness is not established.

THE COURT: Sustained, on the ground of incompetency.

MR. GRAY: There are two of them, Your Honor, under the seal of the officers.

THE COURT: Well, even assuming them genuine, I mean, still they are incompetent to prove value.

Said documents were thereupon marked PLAINTIFF'S EXHIBITS 25, 26, 27 and 28.

27 and 28.

MR. GRAY: If Your Honor please, I didn't offer them for that purpose. I don't want Your Honor to misunderstand my offer. I offered them for the purpose of showing that as a matter of common and general knowledge in the State of Idaho, and has been for some time past, that the real value of property is two and a half times the assessed value of property .

THE COURT: Well, perhaps I don't understand these instruments then. I understood that they simply set forth what the value of property is. Do these say anything about the assessed value?

MR. GRAY: Yes,—the true valuation approximately eleven million dollars, and the assessed valuation four million,—that is in Twin Falls. In the Canyon County district, assessed valuation seven million, the estimated actual valuation seventeen million five hundred thousand. These are the circulars that these municipalities send out generally to the people who are in the habit of buying bonds.

THE COURT: Yes, but wouldn't it be merely a statement of an officer who isn't authorized by law to bind the county, and who isn't required to do that?

MR. GRAY: Yes, I think probably that is true, but nevertheless he is an officer who is presenting certain facts as an officer of the county or an officer of the municipality, to investors; and representations which he makes, while they are not binding as to the question of value, it shows that as a matter of fact these facts are shown by the other testimony are a matter of common knowledge, and everyone knows about it, and it is bandied around in the selling of the bonds and other business transactions.

MR. POST: Common understanding of the people and the officials of the State of Idaho.

MR. POTTS: We submit that it doesn't tend to prove that, if Your Honor please, even on that theory. The fact that an official makes a statement as to true value doesn't show that he has any knowledge as to the true value.

THE COURT: Of course, the Court might take judicial knowledge of the fact that property isn't assessed at its full value generally, but as to the proportion of value, I don't think we could do that, or of the ratio between the actual cash value and the assesment.

MR. POST: It tends to support that evidence that is already in, as to Twin Falls, about the mortgagages and deeds.

THE COURT: The question, of course, is as to its competency. Mr. Gray disclaims offering this for the purpose of showing the value of the property. I think clearly it is incompetent for that purpose. It would only show the opinion of one person as to whether or not there is any real relation between the assessed value and the actual or true value of the property. I think I shall sustain the objection.

MR. GRAY: An exception.

FRED E. WONACOTT, heretofore duly sworn, testified as follows:

DIRECT EXAMINATION:

In 1918 the value which was placed upon logs for assessment purposes was fixed at the point of manufacture, or in the water, in the lake. If the logs were in the woods, or removed from the place of manufacture or the lake, the cost of moving them from that point to the lake or to the point of manufacture was deducted before the logs were assessed.

CROSS EXAMINATION:

I don't think I assessed any logs myself; I think all of our logs were assessed by deputies. I am not assuming what they did; I know what they did.

MR. POTTS: This is not directly cross examination, but I wish to have the witness identify this instrument.

A certain paper was thereupon marked
DEFENDANT'S EXHIBIT No. 3.

I don't know whether Defendant's Exhibit 3 is the form of abstract that was used in 1918 throughout the State of Idaho, showing the assessment of the property in the various counties of the State. This don't come in my hands; I don't have anything to do with the abstract; that is made up by the Auditor, and I am not familiar with that.

Q. Did you make your assessments of property in conformity with the classifications as shown by that form of abstract? A. We didn't have quite as many classifications in the agricultural lands here.

Q. Well, some of the classifications there— you didn't have any of that kind of land, you mean, don't you?

A. Well, for instance, we didn't separate—we put all the irrigated lands under one heading, and the dry farm lands, agricultural lands, were under another head. We just had two headings there for that class of lands. And grazing—arid sage brush, we didn't have. Waste lands—I don't think we had a class of waste lands. And the overflowed lands, we didn't use a classification for that either. Timber lands we had. Cut over and burnt. I don't think there was any mineral lands assessed. Standing timber.

Q. I am not asking you, Mr. Wonacott, whether you assessed each class of property, whether you had each class of property to assess in the county, but whether you followed that classification as to the property that you did have, in making your assessment.

A. With the exception of a few items perhaps on here, we did.

Q. Will you point out the few items that you did not?

A. Well, here is yearlings, one and two years old. Yearlings, cattle, we didn't—we put our yearling cattle in with common cattle, and the system we used would be to put two yearlings in for one of the common ones, and they all went in as common cattle, but we had—two yearlings went in, and all

classified under the head of common or stock cattle.

Q. You put two yearlings in at the price of one head of common cattle, did you? A. Yes, sir.

Q. That is one item under cattle that you didn't classify?

A. I don't think we assessed any calves, that is, if we did, they was assessed with the cows, alongside the cows.

Q. Any other items that you didn't classify?

MR. GRAY: What did they do if they only had one yearling?

WITNESS: I think threshing machines and engines were put under the head of machinery. I don't think we classified them—didn't have any class, threshing machines and engines, I think it was put under the head of machinery.

Q. With those exceptions you followed this classification?

A. Yes, sir.

RE-DIRECT EXAMINATION:

Q. About valuing the logs in the water or at the point of manufacture, did you give your deputies instructions to that effect, Mr. Wonacott?

A. Yes, sir.

Q. To make allowance for the cost of moving them to those places? A. Yes, sir.

RE-CROSS EXAMINATION:

Q. How did you give those instructions, Mr. Wonacott?

A. I talked it over with Carlyle, who did most of that work, and if I mistake not I believe I assessed the Rose Lake Lumber Company's logs. I am not certain about it, but I think I did. And there was a deduction made of their logs; their white pine logs was in the Little North Fork country, and they made a statement of the number of logs they had, to me, a sworn statement, as required by the law, and I think their logs were assessed at nine dollars, and a deduction made of two dollars and a half a thousand for bringing them from the Little North Fork country to the point of manufacture on the Coeur d'Alene River, to their mill.

THE COURT: You mean you actually assessed it at \$6:50 then? A. \$6:50, yes, sir.

MR. POTTS: Q. On the Little North Fork?

A. Yes. That is the white pine logs. That was the system, anyway, to allow the deduction for getting them to the point of manufacture.

WILLIAM THEODORE STEINHART, sworn

on behalf of plaintiff, testified as follows:

DIRECT EXAMINATION:

I reside at Spokane, Washington, and am rate clerk, Northern Pacific, Spokane. I am familiar with the rates on livestock between points in Idaho and Chicago, Illinois, and points in Idaho and Spokane, Washington. I have the tariffs that are approved by the Interstate Commerce Commission. I have the tariff to Spokane which was in

force in January, 1918, but the figures on the tariff to Chicago, Illinois, unfortunately having been unable to locate the tariffs as now being cancelled. I know the difference, however, between the present and the former tariffs. In January, 1918, the rate from Points in Idaho to Chicago, in cents per hundred pounds for cattle and calves was 96c per hundred pounds. The rate on sheep or goats, single or double deck, was \$1.08 per hundred pounds. Hogs are based in single deck cars; from Spokane to Chicago, \$183.00 per thirty-six foot six inch standard car. It is hard to tell what that would average in weight of hogs; it would really take a packer or a meat buyer to tell you. I would say approximately 24,000 pounds; that is about what our cars run.

Q. Is the rate from Spokane any greater than it is from points in Idaho to Chicago?

A. The basis of rate—as a specific point, take Grangeville to Chicago—that would be the furthest point.

Q. And the highest rate, would it?

A. Yes, the highest rate—\$249.00 per car.

(Continuing) That is the maximum rate from Idaho to Chicago. The rate from points in North Idaho to Spokane, Washington, is entirely based on a distance rate. Take Sandpoint as a basis; if I remember right, Sandpoint, a distance of 68.1 miles, the rate is \$31.00 per standard car on cattle, hogs, sheep or goats. The average weight per standard

car of sheep would run approximately 20,000 pounds; the cattle would run a trifle heavier, I would say 26,000. Couer d'Alene was based on a distance rate of approximately 35 miles, \$21.00. We have commodity rates from Moscow to Spokane; on cattle \$29.00 per car; sheep and goats were the same, and hogs are also included. From Lewiston, the basis is \$43.00 per standard car. From Grangeville, \$58.00 per car.

CROSS EXAMINATION:

In stating that Grangeville has the highest rate of any point in Idaho, I mean the territory tributary to Spokane; I am speaking from the Northern Pacific gateway, the furthestest point naturally at the present time being a maximum; it has the highest rate on the Northern Pacific on points in Idaho tributary to the Northern Pacific. The tariff I have just quoted is a re-issue of the January, 1918, tariff. From our checking, our own records, we discover the rates as quoted here were in effect January 1, 1918. The heading of our tariff reads, "Northern Pacific Railway 2480-B. Cancels Northern Pacific No. 2480-A." 2480-A was in effect January 1, 1918. The tariff I have in my hand was made effective May 1, 1918.

RE-DIRECT EXAMINATION:

The rates to Chicago that I gave were rates governing points in South Idaho as well as in North Idaho.

RE-CROSS EXAMINATION:

Those are all carload rates. Where there is not a full car, under a minimum they may have close to, we will say to Chicago, on cattle, the 26,000 pound minimum. If the carload rate is less than a less-than-carload rate the carload rate would apply. In other words, it means that a man would be penalized for having underweight. If a man here in Couer d'Alene had five or six head of cattle that he wanted to ship to Spokane, it would be less than a carload rate, and the first class rate, if I recall, was twenty-five cents per hundred on a probable minimum of say three thousand pounds. We will say each head of livestock, regardless of the weight of it, would be assessed at a specified weight of three thousand pounds for the first head. Each succeeding head would be given a weight of approximately fifteen hundred pounds, whether it actually weighed that much or not; you would have to pay freight on that weight. Under those conditions, from Sandpoint the first class rate would apply in the very same instance. I do not recall what the first class rate would be from Sandpoint. I think the first class rate from Grangeville is about \$1.44 per hundred at the present time; in 1918 it would have been about \$1.15. And the same requirements or arbitrary classification as to weights would apply; the weight is governed and the classification is governed by the western classification, which specifies how much an article should weigh.

On anything less than carload lots shipping to Chicago would be out of the question, especially on livestock.

MR. GRAY: We now offer those stock market reports in evidence.

THE COURT: Very well. They may be received.

(Plaintiff rested.)

C. O. SOWDER, heretofore duly sworn, upon being recalled in behalf of defendants, testified as follows:

DIRECT EXAMINATION:

I am the C. O. Sowder who has heretofore testified in this case. I am the County Auditor of Kootenai County. Referring to the books which are numbered 62, 64, and 67 respectively, they are records in my office as County Recorder; they are records of deed, quit claim deeds, No. 62; and No. 67 is a record of straight deeds, warranty and other deeds; numbers 64 and 67 are records of deeds. In our deed records we have printed forms and blanks. The printed forms are used for the state forms, county form deeds, and the blanks for miscellaneous deeds. By miscellaneous deeds I mean deeds that are not in the printed county form, and deeds in which the printed form cannot be used. No. 67 is a county form; and 64 is also a county form, and 62 is also a county form of quit claim deed. Prior to my election to the office of County Auditor I was en-

gaged in the banking business, as cashier. I was identified in Couer d'Alene with the First Exchange National Bank and the Couer d'Alene Bank & Trust Company. I was cashier of the First Exchange National Bank of this city from 1910 to 1918; I was cashier of the Coeur d'Alene Bank & Trust Company from January, 1918, to August, 1918. My connection with the First Exchange National Bank terminated some time in January, 1918, about the middle of the month. In January, 1918, and immediately prior thereto, I was familiar with the value of the shares of capital stock and shares of stock of the First Exchange National Bank of this city, and I knew the assets and liabilities of the institution.

Q. How did the actual cash value of the shares of stock of the First Exchange National Bank of Couer d'Alene, Idaho, compare with the book value of that stock, in the month of January, 1918, and immediately preceding that time?

MR. GRAY: I object to that as incompetent, irrelevant, and immaterial. The shares of stock of a national bank in this state were assessed under the provisions of a certain statute, and it doesn't make any difference what they were worth.

THE COURT: I think I will sustain the objection.

MR. POTTS: I think I have stated the offer sufficiently. Did I include both banks?

THE COURT: Just one, I think.

MR. POTTS: Q. Were you familiar with the value of the capital stock of the Couer d'Alene Bank & Trust Company, after you became connected with it in 1918?

A. I was.

Q. Now I will ask you to state whether or not the actual cash value of the stock of that bank was in excess of its book value?

MR. GRAY: The same objection.

THE COURT: The same ruling.

MR. POTTS: We offer to prove by this witness that the actual cash value of the capital stock of the Couer d'Alene Bank & Trust Company of Couer d'Alene, Idaho, was not in excess of the value of that stock.

THE COURT: The offer is denied.

LAWRENCE M. LARSEN, sworn on behalf of defendants, testified as follows:

DIRECT EXAMINATION:

I reside in Couer d'Alene and am county stenographer in the county attorney's office, part of my work.

Q. Will you produce the list, a tabulation of Kootenai County, that you have, Mr. Larsen?

The document produced by the witness was thereupon marked DEFENDANT'S EX. 4

(Continuing) The instrument, Defendant's Exhibit 4, was handed to me by Mr. Reed, to check up with the records of Kootenai County. I have

compared the tabulation there with the tabulation contained in pages 90 to 102 inclusive in the book marked Plaintiff's Exhibit 4. All the typewritten part here is a carbon copy of what appears on that exhibit. I checked this exhibit against the records of Kootenai County. I checked over every transfer that appeared on Defendant's Exhibit 4 with the records, as to dates, when executed, the names of of the parties, the consideration, the revenue stamps, and the description of the property. I did not check it over as to the assessment. On checking it I found that in a good many instances it was not accurate, either as to the names of the parties, as to pages on which recorded in the record books, or as to consideration, as to revenue stamps, or as to description of the property. I have not totaled up to find out approximately the number of inaccuracies that I found, but I made a pencil notation on this exhibit of the major ones. On what is marked here as sheet No. 1; in the transfer of Bridget Foley to Eugene Osburn, there was \$1.50 revenue stamps instead of \$2.00; I found that in fact the revenue stamps on the county records were less in amount than shown by the list. On the same sheet, in a transfer of Gus Hansing to O. F. Holgerson, the revenue shown on the sheet here is \$3.00, and on the records it is \$2.50. And in the transfer immediately below that the names of both the grantor and the grantee aren't as they appear on the book.

MR. GRAY: That is, they aren't spelled in the same way.

MR. POTTS: Well, we are not particularly interested in that.

(Continuing) And in the transfer recorded on page 84 of Book 68 of Deeds, it doesn't appear on this record that there were any revenue stamps, and there was \$2.50 worth of revenue stamps. In these that I referred to there are three discrepancies in the revenue stamps, two, and one that wasn't put down at all.

THE COURT: As I get it, there is a greater amount shown on the books of the County in two than is shown upon these sheets?

A. There is a lesser amount in both of them—fifty cents.

THE COURT: On each?

A. In each.

THE COURT: And in the other case the books of the County show \$2.50?

A. And this shows none.

MR. POST: Might I ask, in order to save time—in all three instances the consideration for the deeds is correctly stated on this sheet?

A. Yes, sir. On the second sheet, in the transfer of L. E. Kirkpatrick to P. Lbr. Co., the south half—

MR. POTTS: You don't need to state the description.

A. There are lots 3 and 4 of Section 5, and on here it is shown Lot 3 of Section 4, 52-5 west.

MR. GRAY: No, that isn't it. It is lots 3 and 4, 5-2-5.

THE COURT: Are you interested in the descriptions, Mr. Potts?

MR. POTTS: Well, to this extent, if Your Honor please. We are interested in whether this statement, so far as any material matter is concerned, shows discrepancies, to show how dependable these lists are. The descriptions would have this bearing, that if the descriptions are wrong, in checking as to the assessed value it would be apt to be wrong.

THE COURT: I see your point.

MR. GRAY: Lots 3, 4, 5, 2-5 west. They just left the little dash out between the 5 and the 2.

WITNESS: And that township too. It is section 5, and 4 there. The section is wrong, and there is one more lot. And this, he had just the section there. I just added the section to show what section that was in. On the transfer of Rose Lake Lumber Company to C. Ryser, there is a \$1.50 revenue stamp on that wasn't on this list. And on the transfer of Homer G. Quigley to Ralph W. Straight, this shows a consideration of \$8,000.00. On the books it shows one dollar and other consideration. The County record doesn't show the \$8000.000; it shows one dollar and other. This is what the county record shows; it shows the \$8.00 revenue stamps. In the transfer of John F. Saylor to James J. Day—to Jerome Day, on the re-

cords—there is, in addition to the description shown here, there is also part of Lot 3 of Section 10, 49-4 west, that wasn't put on this list here. And on the deed from Charles H. McCauley to M. E. Hay, the consideration that appears on the records is \$3150 instead of \$3850, as shown on this sheet. A transfer of J. M. Brown and wife to the Independent Order of Odd Fellows, there are \$24.00 worth of revenue stamps that isn't shown on this sheet, that was shown on the records. That is on sheet marked No. 4, typewritten on the corner there. And on the transfer from Mary Field to Nellie De Roshia, there is a one dollar revenue stamp that is not shown on here, and the description is Lot 7 of Sherman Park Addition, Couer d'Alene, while here it shows Lot 7 of Park Addition, and it is Lot 9 on the records, of Sherman Park Addition. The description of the lot is Lot 9 of Sherman Park Addition, and on this list it is Lot 7 of Park Addition, Couer d'Alene. And on the deed of George N. Osborne to Russell & Pugh Lumber Co., the consideration shown on the records is \$7500, and on this sheet here it is \$9000. And in the transfer of J. M. Casey to—it shows on the record A. A. Cram, two transfers, John M. Carey and wife to A. A. Crane. That is on page 5. And there is \$1.50 revenue stamps that isn't shown on this sheet here. And I have written in, in pencil, on this sheet, a transfer of J. H. McFarland and wife to R. H. Grant, consideration \$2500.00, stamps \$2.50,

and it tallies with part of the description that is typewritten on here, but didn't show. The consideration and revenue stamps and the name of the grantor didn't show on that list, and it is the north half of the northeast of 15, 47-3 west. There is a description shown, but no names of the grantees or grantors, and in checking it over it checked out with that description shown there. It doesn't show any consideration here at all. That would be the fourth line of the descriptions. There is nothing shown here under consideration.

MR. POST: It says \$1500 on this one—J. M. Casey to A. A. Cram.

A. This shows that there, you see. All that is shown is the description.

MR. POST: Doesn't it show \$1500 in your copy?

A. It does, for tract 66 of Hayden Lake, but it is for the description just above that, but there is no parties or consideration shown.

MR. POST: Well, that isn't so in this copy. I don't understand what he says. Four descriptions and four considerations.

MR. GRAY: In other words, it reduced the total amount of the consideration.

MR. POTTS: Well, we are not concerned with whether it was reduced or increased.

Q. What is the assessed value of that tract of land as shown on this list, Mr. Larsen? A. \$2,-415.00.

(Continuing) And the consideration is \$2500, as carried out here on this sheet.

And the transfer from Bessie L. and Lawrence Hamp to J. C. Lawrence Company, the description is given as tract 2 of Messiam Park, and the description on the record is Tract F. of Merriam Park. And on page 5, the last transfer, S. L. Land Co., to W. F. Patter, the consideration on this sheet is given as \$1.50 and on the records it is \$150.00. I am now testifying from page 6. From James H. and Lucy J. Irnes, here—it is Imas on the records—to Laura Elma Behm—it is Louise on the records.

MR. GRAY: He jumped page 6. It is the second page 6.

(Continuing) There are two pages 6. Part of the description here shows, on this sheet, as the northwest of the southwest of Section 28, while on the records it is the northwest of the southeast of Section 28. There are conveyances that were not included here, but no value was given either; just a \$1.50 revenue stamp, and no description followed after, and in some cases I just put down the description. In the transfer of M. A. and Chester D. Gibbs to Lucia Armstrong, it is shown on here, the figure 8--33, Town & Kings. The description on the records is one-half of Lot 8, Block 33 of Kings Addition to Couer d'Alene. The only difference is that on the records it is half of the lot instead of the whole. And in the transfer on the same sheet, of F. M. and Maggie Newman to Elma E. Parken, Block

81 has been omitted.. It is the east half of Block 81, 88, 89, and 96.

Q. Now take your consideration and revenue stamps and pass on. Are there other discrepancies as shown here in the descriptions that you found?

A. There aren't except on page 7, the description given as to the north half of the southeast, the southeast of the northeast, and the south half of the southeast, there is no section, township or range given, and I added that on from the record; that doesn't show any difference, except that it wasn't complete. On the transfer of Carl O. and Christian Anderson to M. Gingsich, the consideration is one dollar and the stamps \$1.50, that did not show on this sheet. And on sheet 8, this transfer of Aug. and Emma C. Edgherg to Anna Chapman Smith, the consideration on the records is \$10.00, and it is shown here as \$1.00. And the transfer of Horace and Anna Gunderson to M. Henshel, it shows on this sheet Lot 1, Block 13, of Worley, and on the records it is Lot 18 of Block 13 of Worley.

This was a transfer on 273, marked too old, but the date of the instrument was August 1, 1918, and the consideration was \$600.00, and \$1.00 revenue stamps, and it was for the northeast of the southwest of 33, 52-3 west. All that was marked here was, "Page 273", and, as description of that, it was too old; and I looked at the description to see when the deed was made, and it was made on Aug-

ust 1, 1918, and I put in the consideration and the stamps and the description of the property.

Q. Now hurry on, confining yourself to the consideration and revenue stamps, where it is of any size.

A. In the transfer of T. M.—and should be F. M.—and Maggie B. Newman to Thomas M. Dahl—the description on the records should be F. M. and Maggie B. Newman to Grace W. Williams.

The consideration is \$1000.00, and the revenue stamp \$1.00, where they have \$1.00 consideration and \$1.50 revenue stamp. That is on page 10. The consideration here is \$1.00, and it is \$1000.00 on the records. And on the transfer of Emma and Jason Peterson to W. J. Atkins, the description here is northeast of the northeast of north half, northwest, southwest of southwest, Lots 11 and 12 of 5, 48, 1 west. The description on the records is the northeast of the northeast of Section 7, and north half of the northwest of Section 8. Otherwise it is the same.

And on page marked 11, the description of J. W. S. and F. M. Dillon to O. B. Hudson, there was one eighty acres left out in the description. The southeast of the northwest, and the northwest of the southwest was left out in the description. This marked page 538 of the records, and \$10.00, and there was no revenue stamp, but I have it on my description. There was a \$3.00 revenue stamp on the transfer on that page of the record.

I found the conveyances covered by these thirteen sheets in the miscellaneous deed records. I know the county form of deeds. It had the printed deed book in which those deeds were recorded in 1918. I investigated those deed books for 1918, and found that no conveyances appearing on record on books 64, 67, or 62 of deeds appear in any way upon the records in those thirteen sheets. The recording in these books commences in February, 1917. The first recording in 1918 begins on page 336 of this book, and goes through the balance of this book and part of book 67. That is not completed yet. The deeds from page 336 to page 638 in deed book 64 are instruments recorded in 1918. October 17, 1917, comes at page 250. The deeds recorded from page 250 to 319 are those recorded between October 17, 1917, and January 1, 1918. The entries in 1918 in deed book 67 run from page one to ten; the rest of it is in 1919.

MR. POST: That is a quitclaim deed book, isn't it?

MR. POTTS: That doesn't make any difference, whether it is or isn't.

WITNESS: I found that none of the conveyances recorded in 1918 in this quitclaim deed book were mentioned in any way on these thirteen sheets.

Q. Well, just point how many there are in 1918. Go back to October 17, 1917, if there is a starting point at that date in the book.

A. It begins on page 101 and runs to page 146 inclusive, deeds that were recorded in this book between October 17, 1917, and January 1, 1919.

Q. Now do all those deeds express a consideration of one dollar, or do they express other considerations?

A. They express other considerations.

(Continuing) Some of them have revenue stamps on them. The various deeds that I have just testified about in the three books are not included in the list which I compared. I did not count the number of those deeds, except that there were over three hundred or three hundred pages in the two books containing the county form of warranty deed, and the number given of the quitclaim.

CROSS EXAMINATION:

I did not go through this quitclaim deed record very carefully.

Q. You said that there were many other considerations than one dollar mentioned here. I am going to have you just take that at the beginning and turn them over rapidly, and read the considerations in those several ones, and the revenue stamps, if any show.

THE COURT: I don't see the materiality, gentlemen, of the quitclaim deed book. I didn't understand Mr. Wonacott to testify that he undertook to classify the quitclaim deeds. Beyond that for the purpose of showing the value of the property conveyed, the consideration named in a quit-

claim deed would have no prohibitive value at all, would it?

MR. POTTS: No. Your Honor appreciates, I have no doubt, that we have simply checked up this tabulated statement in this county, and are showing the omissions.

THE COURT: I don't think we will take the time to go into this gentlemen.

Q. Now, Mr. Larsen, in record book 64, where did you start and say that the deeds during that period were not included in this list?

A. I said the deeds that began being recorded on the 17th of October, what the records show.

Q. What was the date of that deed?

A. The 9th of May, 1917.

(Continuing) The next deed is dated the 3rd of April, 1917. The next one was the 11th of February, 1917, and the next one the 19th. The next one was the 2nd of August, 1917, and the next one the 20th of October, 1917, with a consideration of one dollar and other valuable consideration. I don't see any revenue stamps on here. The next one is the 19th of October, with a consideration of one dollar and other valuable; I don't see any revenue stamps.

Q. Take the next one.

A. Fifty dollar consideration.

Q. The date?

A. The 3rd of March, 1909.

(Continuing) The next one is the 6th of Dec-

ember, 1911; the next one the 22nd of November, 1916; the next, the 18th of June, 1916; the next the 12th of October, 1917, with a consideration of one dollar and other valuable; I don't see any revenue stamps. The next one is the 4th of December, 1915; the next one the 23rd of October, 1917, consideration \$300.00; I don't see any revenue stamps. The next one is the 8th of October, 1917. That last one, the one that we just passed, was a town lot.

Q. The one on 264?

A. That is the 8th of October, 1917.

Q. What is that?

A. The consideration or the lot? Consideration \$1400.00. It is on a Hayden Lake irrigated tract. I don't see any revenue stamps.

The one on 265, the 8th of October, 1917, consideration \$2400.00, no revenue stamps. Next, the 22nd of October, 1917, consideration \$2100.00, no revenue stamps. Next, the 31st of March, 1917; the 6th of June, 1917; the 30th of November, 1912; the 26th of October, 1917, consideration one dollar and other valuable, no revenue stamps. The next is the 22nd of October, 1917, consideration \$300.00, no revenue stamps; that is a lot in Athol. The next is the 10th of March, 1915; the 8th of October, 1917, consideration one dollar and other valuable, no revenue stamps. The 10th of March, 1915. The 25th of April, 1917. The 30th of October, 1917, consid-

eration one dollar and other valuable, no revenue stamps. The 1st of August, 1916. The 5th of November, 1917, consideration one dollar and other valuable, no revenue stamps. The next is the 9th of July, 1917. The 30th of October, 1917, consideration one dollar and other valuable, no revenue stamps. The 2nd of November, 1917, consideration one dollar, no revenue stamps. The 3rd of October, 1917, consideration one dollar and other valuable, no revenue stamps. The 5th of November, 1917, consideration one dollar and other, no revenue stamps. The 6th of November, 1917, consideration \$225.00, no stamps; that is a lot in the town of Worley. On page 285, November 9, 1917, consideration \$100.00; no revenue stamps; that is a part of forty acres of land, with an irregular description. November 9, 1917, consideration \$100.00; that is a part of eighty acres of land, with an irregular description. Page 287, October 29, 1917, one dollar and other valuable, no revenue stamps. The 12th of November, 1917, consideration \$10.00 and other valuable, no revenue stamps. Page 289, November 10, 1917, consideration one dollar and other valuable, no revenue stamps. The 24th of July, 1917, consideration one dollar, and no revenue stamps. The 2nd of August, 1917. The 2nd of August, 1917. The 11th of October, 1917, consideration \$3600.00, no revenue stamps that I can see. The 6th of February, 1915. The 2nd of August, 1917. The 14th of November, 1917, consideration one dollar and

other valuable, no revenue stamps. The 30th of October, 1912. The 16th of April, 1917. The 16th of November, 1917, consideration \$2500.00; that is tract 54 and block 35, Post Falls irrigated district.

MR. POTTS: By the way, that is agricultural land?

MR. GRAY: It is supposed to be, Mr. Potts.

MR. POTTS: But is it?

MR. GRAY: It is fruit land that some of my friends—

(Continuing) The 20th of June, 1916. The 12th of September, 1917. The 25th of October, 1917, consideration one dollar and other valuable, no revenue stamps. The 24th of September, 1917. The 2nd of October, 1917, consideration one dollar, no revenue stamps. The 23rd of April, 1915. The 23rd of April, 1915. The 26th of November, 1917, consideration one dollar and other valuable, no revenue stamps. The 25th of October, 1917, consideration \$15.00, no revenue stamps. That is an irregular description. The 26th of February, 1917. The 14th of November, 1917, consideration \$682.80. That is a lot in Woodlawn Park Addition to Couer d'Alene. November 26, 1917, consideration \$100.00. That is for a lot in Couer d'Alene. No revenue stamps. December 1, 1917, consideration one dollar and other valuable; no revenue stamps. The 29th of February, 1916. The 7th of December, 1917, \$500.00, and there is a fifty cent revenue stamp. That is for ten acres of land. The

10th of December, 1917, one dollar and other valuable, and a fifty cent revenue stamp. The blank day of June, 1917. The 10th day of December, 1917, \$350.00 consideration, no revenue stamps, and an irregular description; it runs by feet, and starts at a point and ends at a point. December 10, 1917, \$100; it is for a lot in Worley; no revenue stamps. Page 319, November 13, 1917, \$250.00, no revenue stamp, lots 2 and 3, the southwest of the northwest and the southeast of the northwest of section 5, 47, 3 west. December 10, 1917, \$10.00 and other valuable consideration \$2.00 revenue stamps. October 29, 1917, one dollar and other valuable consideration, no revenue stamps. December 14, 1917, \$6000.00, revenue stamps, \$6.00. The blank day of December, 1917, one dollar and other valuable consideration, and \$1.50 revenue stamps. The 1st of September, 1903. The 20th of April, 1917. The 19th of March, 1917. The 11th of April, 1911. The 1st of March, 1917. The 30th of June, 1915. The 10th of November, 1917, consideration one dollar and other valuable; I don't see any revenue stamps. The 23rd of June, 1917. The 20th of December, 1917, one dollar and other valuable; there appear to be no revenue stamps. The 27th of December 1917, \$1000.00 consideration, part of it was for lots, \$1.00 revenue stamps. It is part of certain lots with an irregular description, in Section 17, 43 West, lying between the right of way of the Oregon Railroad & Navigation Com-

pany and Lake Coeur d'Alene, except a certain other part which is excepted by feet in measurement. November 24, 1917, consideration \$5250.00. That is in the Dalton Garden tracts. The 30th of November, 1917, one dollar, no revenue stamps. December 26, 1917, one dollar and other valuable.

From there on it is 1918. That is the general character of the instruments that are filed in here. None of these conveyances in this book were put in the statement. It runs through the entire year of 1918 in this book, that and ten pages in the other book; and the same is true of the ten pages in the other book. None of the instruments recorded in these two books on these thirteen sheets. Those two books had the regular county form deeds. I have gone over and carefully checked these tabulations of Kootenai County lands. I did not take the trouble to find out what the difference was in the totals; it wouldn't vary so very much. I wouldn't want to say what it would be. On the first page the only discrepancies I find are in two places; in one place I find a \$1.50 revenue stamp instead of a \$2.00, and another place a \$2.50 revenue stamp instead of a \$3.00; and in still another place a \$2.50 revenue stamp is found which isn't shown on this list. Where the \$2.50 revenue stamp is shown the consideration is \$2500.00; and where the \$2.00 one is shown, which should have been \$1.50, the consideration is \$1400.00; and where the \$2100 consideration is shown the \$2.50

revenue stamp appears. On that sheet the considerations were all right, on sheet one. On sheet two the only thing was that in one place, in the consideration, is shown \$8000.00 instead of one dollar and other, in the conveyance of Quigley to Straight; there were \$8.00 of revenue stamps there, so that would represent an \$8000.00 consideration. I found one error in the consideration on page 3, where it should have been \$3150.00 instead of \$3,800.00. That is the first error in consideration, either in the stated consideration or in the relation between the revenue stamps and the nominal consideration, and then here, also a part of Lot 3. On page 4 I found a consideration of \$7500.00 instead of \$9000.00.

Q. In going through these did you take into account any mortgages that were assumed in the consideration? Did you take into account in the consideration whether or not the deed assumed the mortgage?

A. I don't remember whether I did in that one or not.

This one I made a notation of. But I am not sure whether I did in that.

Q. That is in the one which is \$9000.00 and shows as \$7500.00? A. Yes.

Q. You found one description there that was in Sherman Park Addition instead of Park Addition?

A. The lots were different, lot 9 instead of lot 7.

Q. You found here one deed carrying a consideration of \$2500. where there was a \$2.50 revenue stamp upon it, and the stamp does not show upon this tabulation? A. Yes.

Q. It doesn't change the consideration, does it?

A. A \$24.00 stamp where there is a \$2400.00 consideration.

Q. And the stamp indicates \$24,000.00?

A. But I checked that; \$2400.00 was the consideration.

Q. But if the stamps are correct the consideration was \$24,000.00. Was any mortgage assumed there?

A. I don't know; I didn't check over to see.

THE COURT: That is a town lot, isn't it?

MR. GRAY: Yes, sir.

Q. Now then, on page 5 you find that one piece of land which is described there, there is a consideration of \$2500.00 which should be added?

A. Yes.

Q. Well, that with pretty nearly balance what was left off, the difference on the page before, won't it? A. Yes.

Q. Any other mistakes in consideration that you found?

A. Well, except adding these few revenue stamps which weren't shown on here.

Q. But that doesn't change the consideration?

A. No. And here there is a description.

Q. Called Messiam Park insteam of Merriam Park?

A. Yes; and it is Tract 2 here and Tract F on the records.

Q. And one place you find a consideration here of \$150.00 where it is marked upon the statement produced as \$1.50?

A. Yes.

Q. And no revenue stamps?

A. That's right.

Q. That is evidently a typographical error. The next page, you find nothing affecting consideration?

A. No.

Q. The next page you find nothing affecting the consideration?

A. Not affecting the consideration. I do on the descriptions and a few revenue stamps.

Q. On the next page do you find anything affecting the consideration?

A. Except on this tract, there is \$1.50 revenue stamps.

Q. The fourth from the bottom was \$1.50 revenue stamps, should show?

A. Yes.

Q. That is the only difference you find there?

A. Yes.

Q. On page 8, anything in the consideration? You found one of those \$1.00 that should have been

\$10.00, is that right?

A. Yes, and where the revenue stamp should have followed the one dollar and other valuable consideration.

Q. The revenue stamp was fifty cents?

A. Yes.

Q. You didn't consider those—

A. And this one that was marked on this sheet "Too old," it was a deed dated August 1, 1918, consideration \$600.00, and one dollar revenue stamps, on forty acres of land.

Q. Was that the date of the deed or the date it was recorded?

A. It was the date of the deed.

Q. Anything on page 9, anything affecting the consideration?

A. Not the consideration.

Q. On page 10 anything affecting consideration?

A. In the middle of the sheet there is a \$1000.00 consideration given as one dollar.

Q. That is the one to Dahl?

A. Yes; it is to Grace W. Williams instead of Dahl, one dollar revenue stamp instead of \$1.50.

Q. Any other?

A. No.

Q. On page 11, anything affecting the consideration?

A. No.

Q. On page 12 anything affecting the consider-

ation?

A. No.

Q. How many books of deeds did you look through, Mr. Larsen, in checking these up?

A. I looked through book 66 and book 68. On this sheet it refers to book 67, but there are no entries on book 67 that jibe with any of the data on here.

MR. POTTS: Doesn't your record show the number of deeds that you have there in Kootenai County, that that compilation is taken from, on the yellow sheet at the beginning of the—

MR. GRAY: 290 deeds.

(Witness excused.)

R. S. KERCHIVAL, sworn on behalf of defendants, testified as follows:

DIRECT EXAMINATION:

I reside at Coeur d'Alene, Idaho, and am deputy County Auditor of Kootenai County.

Q. Mr. Kerchival, do you know what the state and county levy of Kootenai County was in 1918?

MR. GRAY: I don't see that that is material.

THE COURT: He may answer.

Q. The state and county separately, Kootenai County, in 1918.

A. The state levy in Kootenai County was 2.8 mills; the county levy was 12.2, a combined levy of 21 mills.

Q. What was the last one?

A. 12.2.

Q. You didn't mean 21, did you?

A. Fifteen mills, I mean to say.

(Continuing) I own some land in Kootenai County, and am generally familiar with the irrigated lands in this county. I own some irrigated land. I knew of irrigated lands in Kootenai County being bought and sold in the year 1918, or the latter part of the year 1917. I know how much per acre irrigated lands in this country were assessed at in 1918. The assessment was \$50.00 per acre on the irrigated tracts, in the five different districts; that was on the land alone. The land I owned was in the Hayden Lake irrigated tracts. I think I purchased some of them in 1916 and owned those tracts in 1918. I was familiar in January, 1918, with the reasonable market value of irrigated tracts generally.

Q. What was the market value of those tracts generally in this county at that time?

A. You mean just for the land itself?

Q. The land itself.

MR. POST: Water right?

MR. POTTS: Including water right, of course.

MR. POST: And fruit trees, etc., on it?

MR. POTTS: Not including improvements.

MR. POST: It includes trees, though.

MR. POTTS: Well, the trees were a liability then.

THE COURT: Perhaps you are willing to have

them included then, Mr. Potts. Including water right and trees, and you mean cultivated—of course the cultivation comes in?

MR. POTTS: Of course I have to get at the value of the land generally, if Your Honor please.

THE COURT: Yes. But so the witness will understand you, you are excluding certain things?

MR. POTTS: I exclude improvements.

THE COURT: By that you mean what?

MR. POTTS: By that I mean the things that are assessed as improvements—the buildings and additions to the lands.

MR. POST: What do you mean by additions to the lands?

MR. POTTS: Just exactly what it means—anything added to the lands.

THE COURT: Does the statute define what shall be included in improvements?

MR. POTTS: Yes, the statute defines improvements. I am not able at this moment to give a complete definition, as the statute defines them. I will direct the inquiry first, however, to the lands which are unimproved.

Q. Are there a considerable quantity of those lands which have no improvements on them, aside from being cultivated?

A. There is, yes, sir.

Q. What was the market value of those lands in January, 1918?

A. As I understand, Mr. Potts, you mean the

land that was being used for agricultural purposes, other than the orchards?

Q. Yes.

MR. GRAY: Oh no; he means all of them.

MR. POTTS: I am directing my inquiry now—other than the orchards.

THE COURT: Very well. He may answer.

A. I know the value of lands that were out there being used for agricultural lands, but I don't feel that I could put a value on the orchard land.

Q. That is what I am directing the inquiry to now, is the lands used for agricultural purposes.

THE COURT: What could they be bought for?

A. They were bought for from \$55.00 to \$70.00 during the time that I purchased these.

MR. POST: He says during the time he purchased them. He is not confining it to January, 1918.

WITNESS: Yes, sir. There was practically no difference in the value between that time and the second Monday of January, 1918.

(Continuing) I knew of these irrigated tracts being bought and sold in the latter part of 1917, at those figures; I don't recall any sales being made right around early in 1918. The five irrigation districts I mentioned comprise the irrigated land in this country; there are five known irrigation districts in this county. I couldn't state positively the comparative amount of the land in those five districts which was farm land used for farming pur-

poses, as distinguished from orchard lands. I have never paid a great deal of attention to the amount of land in the district in which I am out there, but the majority of it is not in trees, the majority of that district. I don't know just what percentage, but the majority is not in orchard.

CROSS-EXAMINATION:

My land is in the Hayden Lake irrigated district; it is supposed to be irrigated land. I have never raised crops on it by irrigation; it has been farmed as dry-farm land. The land right across the road from this place I am speaking of has the water on it, and mine has the domestic water on it, but I have never used the irrigating water; I have never been able to get enough to use. That is the history of the district there. In this particular district there has been difficulty in getting water. I have simply grown dry-farm crops. And for that purpose it has been selling at from \$55.00 to \$75.00 an acre; that is its market value.

Q. Now, in going out to your land you go through several miles of beautiful orchard land, cultivated, and with berry bushes and other small fruits on it, don't you?

A. There is some. As a general thing you don't go through it; there is some on one side of the road.

Q. You know where Dalton Gardens is?

A. Yes, but I don't go through it.

Q. Do you know how many acres in Dalton Gardens?

A. Something over a thousand, I believe.

Q. What was the average value in the latter part of the year 1917 and in January, 1918, what was the average market value of that land in Dalton Gardens?

MR. POTTS: The witness has already stated that he didn't know the value of fruit lands, orchard lands.

THE COURT: Well, do you know the value of this land in the Dalton Gardens section?

A. There is very little land, as I remember it, Mr. Gray, in Dalton Gardens that is not in trees. There are a few tracts that sold rather cheap that aren't in trees; I don't know for what reason, whether they are a little high, or what it was. I couldn't tell you what the value of the Dalton Gardens is, because they are highly cultivated lands, and have a great many improvements on them.

Q. And they are included in what is classified as irrigated lands in this country?

A. Yes, sir.

Q. And assessed at an average value of \$50.00?

A. I think it is a straight assessment of \$50.00.

(Continuing) My land out there was assessed at \$50.00 an acre; also the land in Dalton Gardens. In 1918, on my land I raised potatoes and grain. I had ten acres of potatoes in there in 1917, and in 1918. I cannot tell you how many bushels of potatoes to the acre I got. In 1917 I believe I got something over six hundred sacks off of ten acres.

I don't remember the market value per sack in the fall of 1917; it was something around between \$1.00 and \$1.25, I believe.

Q. What did it cost you to raise those potatoes on that ten acres?

THE COURT: I don't think we can go into those details.

MR. GRAY: I think it very materially tends to show that as a matter of fact his own assessment was very low—to think of raising 600 sacks of potatoes on land assessed at only \$50.00.

THE COURT: If he got only 600 sacks of potatoes off of ten acres—he ought to have gotten that many off of three acres.

MR. GRAY: But he isn't a good farmer; he is a county auditor.

(Witness) I didn't have quite that many potatoes in 1918; I don't remember just exactly. I was in the hospital part of that summer, and I don't remember just what the crop—I raised some grain out there. I haven't kept the cost of these things separate. I have some other lands there, and I farm them all together. I have some other land there that I speak of as not being irrigated land; I have it in grain mostly; it is dry farm land.

Q. What is that assessed at?

MR. POTTS: We object to that as improper cross-examination. We haven't gone into dry farming.

MR. GRAY: He calls this irrigated land, but

as a matter of fact it isn't?

MR. POTTS: It is assessed under a classification of irrigated land, at fifty dollars an acre, and that is what our inquiry is directed to.

MR. GRAY: Our inquiry is trying to get at what the facts are. And he has probably got a large farm out there adjoining these few acres that probably raises more wheat than his alleged irrigated land.

THE COURT: Is this land you are directing his attention to included in what is called irrigated land?

Q. You say you have a lot of land adjoining there?

A. I have a piece of land between the two districts, that is not within the irrigated limits.

THE COURT: I don't think it would be cross-examination then.

MR. GRAY: It might be, for the purpose of finding out about the assessment of such land. He comes in here and has a few acres that he doesn't put any water on, in an irrigation district, and calls it irrigated land. We ought to be able to show that, Your Honor. He has this large dry farm right adjoining it, and probably raises as much on the—

THE COURT: That may be, but counsel has inquired of him only as to the actual valuation of what are called irrigated lands, and from his testimony I take it that these lands are assessed uniformly, whether they are good or bad, and if they

are called irrigated lands they are assessed at so much per acre, regardless of their real value.

MR. GRAY: I will take an exception to Your Honor's ruling.

THE COURT: Yes.

Q. You were in the courtroom when I was just inquiring of Mr. Larsen concerning these conveyances?

A. I was.

Q. Did you hear him refer to that deed dated the 24th of November, 1917, from May J. Holden and her husband to Gertrude Rowell, for three tracts in Dalton Gardens addition, \$5250.00?

A. I just heard it read.

Q. How many acres in a tract out there?

A. Dalton Gardens is very irregular, Mr. Gray. I wouldn't be able to state.

Q. They are very small tracts, aren't they?

A. Yes. Some of them are two and three, and I believe a few five and ten. I would have to see the plat to tell you.

Q. Nothing more than that?

A. No, I don't think so.

Q. Do you know the tract owned by James and Lena Rhodes, tract 322?

A. I do.

Q. What is that worth? What was it worth at that time, 1918?

A. The ten acres?

Q. Yes.

A. Well, with the improvements on the tract or as it—

Q. Yes, with the improvements, and then without them.

A. The way the tract was in 1918, it was worth \$7,000.00.

Q. What were the improvements?

A. A small house and just a very small barn, and fence, a number of berry bushes, and about half of the balance in trees.

Q. What kind of trees?

A. Apple trees, I think, mostly. There might have been a few cherries there.

Q. Do you know that a mortgage of \$450.00 was negotiated on that at that time?

A. I don't know it, no, sir.

RE-DIRECT EXAMINATION:

I do not personally recall this Holden place in Dalton Gardens. I know the lands that are included in the irrigation project of the Post Falls Land & Irrigation Company, generally. Post Falls is situated like we are; a few tracts had some water, and the majority of them didn't have any. I don't think anyone in the Hayden Lake district got the water they required or asked for. In 1918 Dalton Gardens went dry for the lack of water. They had to put in a new system later. And Avondale was very short; that is another district out there, between the Hayden Lake and Hayden Lake proper. Those are the lands which I have referred to as be-

ing assessed under the classification irrigated lands, at \$50.00 an acre.

RE-CROSS EXAMINATION:

A. I don't recall any sales in Avondale late in 1917 or early in 1918. I don't recall any sales in Post Falls just at that time. I know at what price per acre that land was mortgaged; the Miami corporation I believe had a fifty dollar first mortgage. The other districts I refer to—Post Falls, Hayden Lake, and Dalton Gardens, what is known as Greenacres—it is properly East Greenacres. I can't place any sales down there right in 1918. I should say there is a proportion of that land that is really highly cultivated. East Greenacres is one of the most highly cultivated districts in the country. It wouldn't be worth three or four hundred dollars an acre to me; I don't think that is the market value of the highly cultivated land of East Greenacres. I have no way of placing the value; I have never heard of a valuation of that much. I don't recall any sales outside of the Hayden Lake district there; that is out where I am. It was very near impossible to sell land in there at that time, Mr. Gray; I don't recall any sales of highly cultivated land at that time. In going out to my place I go past a tract of land which was formerly owned by Kennedy J. Hanley, which was formerly in grain; I am very familiar with it. I think there are 140 acres in it,—something over 120. I didn't know that it had been sold. The Holland Bank owned it,

I think; I do not know the amount of the mortgage they had on that property. That was in trees at one time. I don't know whether it has been in grain the last few years or not.

RE-DIRECT EXAMINATION:

I am not sure whether the Kennedy J. Hanley place is under the plat of Dalton Gardens or not; if it is not in the district, it is surrounded on two sides. Mr. Hanley placed an orchard on it, and the trees were several years old, and they were all removed. Referring to the mortgage on the lands in the Post Falls irrigation district, to the Miami Company, I understand the original loan was to the Deering Harvester Company. I don't know whether the company got it all; there is quite a lot of it assessed to them now. They foreclosed their mortgage and bought in that land.

RE-CROSS EXAMINATION:

I am not familiar with how big their mortgage was, but it took in quite a lot of property there.

(Witness excused.)

F. W. FITZ, sworn on behalf of defendants, testified as follows:

DIRECT EXAMINATION:

I reside at Coeur d'Alene. My occupation is real estate and insurance. I have been engaged in the real estate business in this city and vicinity for something over thirteen years. I have handled all classes of real estate, both on a commission basis

and on my own account. During that period I have acted as a real estate broker, in negotiating sales and purchases of real estate. I have handled all classes of property here in Coeur d'Alene, both business and residence property. Outside the city, in this county, we make a business of handling all kinds of lands, irrigated and dry farm lands and cut-over lands. I was familiar with sales generally of city property in Coeur d'Alene in the month of January, 1918, or close to that time, both prior and afterwards, during the year, and was familiar with values generally in this city at that time. Generally speaking there was not very much activity in real estate here during the early part of the year 1918 and the latter part of the year 1917; real estate values were very low at that time. My opinion is that the year 1918 was a period in which values of city property reached their lowest stage. Values afterwards took an upward trend in this city; in our experience that commenced immediately on the signing of the armistice, in November. Values here in Coeur d'Alene had been gradually declining since 1907, or, I would say, since 1908 and 1909. In 1907 there wasn't much decline, but starting with 1908 and 1909 values began to drop.

CROSS-EXAMINATION:

There was very little activity in real estate during the war. During 1918 I was familiar with real estate in Montana, and that was generally true. Real estate was moving very slowly, if at all. There

was some movement in Montana, but it was generally true, so far as my experience went, that during the war real estate wasn't being bought and sold very much.

RE-DIRECT EXAMINATION:

Q. Was the depression in values in Coeur d'Alene due to the war, in your knowledge and experience?

A. I wouldn't say that it was, no.

(Witness excused.)

A. L. ROWE, sworn on behalf of defendants, testified as follows:

DIRECT EXAMINATION:

I reside at Coeur d'Alene, Idaho; I am a clerk. At the present time I am working in the Treasurer's office, where I have been working about six weeks. My general business is that of a clerk. I was with the St. Joe Boom Company all summer as a clerk, clerical work. My employment in the Treasurer's office is during the tax-paying period. I know Mr. Wonacott. I was deputy assessor under him in 1918; I was one of the appointed deputy assessors. I was not a deputy assessor in 1917, but had been in 1916. In 1918 I helped to assess Sherman Park; that is the fort grounds, an addition to the city of Coeur d'Alene. I only worked in the city of Coeur d'Alene. And I myself assessed Syms Addition; that is beyond Harrison, between Fourth and Eighth streets. The Sanders Park addition. The

Sanders addition. The Casemyer addition—not all of it. Lake Shore Addition, part of it. I received written instructions from the assessor prior to starting out to make my assessment. I have my instructions. I am not positive that these are the instructions that I received from Mr. Wonacott in the year 1918; I couldn't find them. In fact I think that is the 1916 instructions. I received similar written instructions in 1918. I was not instructed by Mr. Wonacott or anybody else in 1918 to assess the property which I undertook to assess on any percentage of its full cash value. Mr. Wonacott told me that a full cash value, as he understood it, was what the property would sell for within a reasonable length of time, provided a man was compelled to convert it into cash, not when we would call on the man, nor give him an unlimited time, but a reasonable time, he said, probably sixty days or ninety days; so we assessed them on those lines. The valuation of the lots we worked out here in the office; we made a graduated valuation from the corner of Fourth and Sherman here. The lots were all graduated from this point. And then when we got on the ground, if a lot was worth less or worth more, we changed it according to our judgment; and then we put the improvements on the lot when we arrived there. I put a value on the property that I thought it would sell for. That was the criterion I attempted to use in valuing the property for the purpose of assessment.

In placing a valuation on any property that I assessed I did not attempt to assess it on any percentage of its full cash value. I have lived in Coeur d'Alene for about fourteen years, and have been familiar with conditions here during that time, and with the general business conditions and values of property generally. To the best of my judgment I assessed the property on which I placed valuations for assessment in 1918 at its reasonable cash value; I did the best I could, and I think—I didn't have any complaints. I will explain that later, if you want it.

CROSS-EXAMINATION:

Q. Mr. Rowe, I want to find out what sources of information you looked to in finding the value of property. Did you simply use your judgment as you went around, or did you make inquiries as to what property was selling for?

A. There was no sale of property at that time.

(Continuing) I did not go to the county records and examine them to see what pieces of property within my sphere of duty had been sold at, within a reasonable time before. I did not go and consult the mortgage records to see whether any of this property was mortgaged. I remember the property of Judge Beatty in Sherman Park; I assessed that that year; I know just where it is. I remember as I went to assess it I saw a sign up there that it was for sale, and to inquire of Sampson. I did not take the trouble to go up and find out from Mr. Sampson

what was asked for that property. I assessed the Judge himself; I met the Judge himself. I did not ask him what he was trying to sell it for. I asked him if he thought that was a reasonable valuation on his property, and he said yes.

Q. You assessed those lots for \$600.00, didn't you?

A. Well, I couldn't say as to that.

Q. And that house of his for \$1800.00?

A. Well, I was going to say \$2000.00, but I guess—

Q. Mr. Rowe, that is a pretty good, a very nice house, wasn't it?

A. It is a very good house, yes, sir.

Q. You think, now that you consider it, that that really was worth considerably more than \$2400.00, wouldn't you?

A. Well, the way stuff was selling here at that time, it wasn't worth very much more, I don't think.

Q. Wouldn't you say that the reasonable market value of that property at that time was more than \$2400.00?

A. I wouldn't have give him over \$2400.00, if I wanted to buy it.

Q. Don't you know that it sold in the same year for very much more than that?

A. No.

Q. I think you also assessed my property, didn't you?

A. I believe I did.

Q. I was wondering as I saw you if you recollect that you also took into consideration the question of household goods and furniture?

A. Yes.

Q. Did you assess any of that but mine in this town, against any single person, in your sphere of duty?

A. Yes, sir.

Q. Did you assess household goods and furniture against anyone else in town, except me?

A. I certainly did.

Q. I would like to know the name of that person, if you have any recollection. Don't you recollect telling me that no one's household goods was being assessed by you, and that all I would have to do was to make an affidavit that it was worth less than a certain sum, and you would let it go by?

A. I don't remember that, no.

Q. Did you assess anyone else's household goods in this city except mine?

A. Yes.

Q. Whose?

A. R. S. Nelson was one of them.

Q. Anyone else?

A. I think Mrs. M. D. Wright.

Q. You say you assessed Mrs. M. D. Wright?

A. I think she had some.

Q. Was she in your sphere of duty?

A. Well, there was some of that stuff I was

sent out to assess.

Q. All right. I want to know who those others are.

A. I think Mrs. Graham had to pay on household goods.

Q. Anyone else?

A. Well, the assessing I did did not include such residences any more—I caught you because I assessed your office at the same time.

Q. The idea was not to assess household furniture that year, wasn't it?

A. No, sir. If they had it we assessed it. And I will tell you—we assessed pianos. Mr. Wonacott instructed me in this way, that if a man had a piano we would assess the piano and make a certain valuation.

Q. How much did you assess pianos?

A. From \$100.00 to \$250.00. And while you will find many household goods not assessed, you will find a piano assessed at that time. Otherwise we would have had to put on so much for household goods, including pianos, and then take it off on the other side, so we assessed the pianos. But the residences I covered were not people who would have property of that extent, as a rule.

Q. Did you assess my property at what you thought it was reasonably worth?

A. I did. I assessed it at what I thought it was worth. I assessed your library.

Q. Now, in assessing, when you would come to

a piece of property with a building on it, did you look the building over?

A. Yes, sir.

Q. If it was an old building did you make allowance because of that fact?

A. Yes, sir.

Q. And you took into consideration, did you, the age of the building, in making the assessment?

A. I certainly did, yes, sir.

MR. POTTS: I presume the court will take notice of the fact that there was a \$400.00 exemption of household goods under the laws of Idaho at that time.

MR. POST: You have to assess it first, don't you?

MR. POTTS: Oh, I am not so sure about that. That is all, Mr. Rowe.

(Witness excused.)

Two documents were thereupon marked DEFENDANT'S EXHIBITS 5 and 6.

MR. POTTS: We offer in evidence Defendant's Exhibits 5 and 6, which are certified copies of the abstract of the real property assessment roll for the year 1918, of the entire State of Idaho, and the same as to the personal property of the State of Idaho, certified by the State Auditor.

MR. GRAY: I have no objection.

MR. POTTS: Not including public utilities.

Two documents were thereupon marked DE-

FENDANT'S EXHIBITS 7 and 8.

MR. POTTS: We offer in evidence Defendant's Exhibits 7 and 8, being the original abstracts of the real property assessment roll and the personal property assessment roll of Kootenai County, for the year 1918.

MR. GRAY: I have no objection.

MR. POTTS: We will ask permission at this time to substitute copies for those abstracts.

MR. GRAY: All right. Have you anything here showing what exemptions there were of household goods, etc.? It is interesting.

MR. POTTS: Not that I know of. I haven't looked at it. I haven't been interested in it.

GEORGE CARLYLE, sworn on behalf of defendants, testified as follows:

DIRECT EXAMINATION:

I reside at Coeur d'Alene; occupation, lumber business, the log end of the lumber business. I have lived in this city between eighteen and nineteen years, and have been following the log end of the lumbering business during the greater part of that time; that is, I have scaled logs, and I have bought logs and had charge of logging, different logging operations. I was deputy assessor in 1918. I assessed property in Kootenai County, up on the Coeur d'Alene River. I assessed townships 48, 1 east and 1 west; and 49, 1 east and 1 west; and I also assessed township 49, 3 west, and 50, 3 west.

In 1918 I did not do any assessing in the city of Coeur d'Alene. The sections I have enumerated are the only land that I assessed, the real estate proper. Before commencing my assessment in 1918 I received written instructions from the assessor, which I have with me (producing same).

Said paper was thereupon marked DEFENDANT'S EXHIBIT No. 9.

The instrument marked Defendant's Exhibit No. 9 are the instructions to which I refer. When I went out to assess the townships Mr. Wonacott gave me a prospect to show how they were assessed the year before, and if in my judgment they should be assessed different, to change them, which I did, in different instances, in my judgment, I changed them. But he gave me a map of each township showing the name of the owner and showing the amount that had been assessed for the year before. That would be a guide, so I would know without too much trouble to find out the rate; that was a guide, but to change them if it needed to be, in my judgment. I made changes; I lowered them and raised them, as the case may be. In making my valuations I did not attempt to assess on any percentage basis of the real cash value; I had no instructions from Mr. Wonacott to attempt or try to assess property at any percentage of its value.

CROSS-EXAMINATION:

I assessed some logs. Mr. Wonacott gave me the amount that I should assess them for. He

claimed, I think, that it had been fixed by the County Commissioners and himself, as I understood, and I assessed them on that basis. I did not assess them at the same price wherever they might be. If the logs were back in the woods I deducted what I thought it would cost to put them in the water, put them here in the river, what we call the slack water, or in the lake, where they could be gotten comparatively cheap to the mill. I think I assessed most of the logs in the woods at \$3.00, if I remember. Most of them were in the woods. That would be the mixed logs, in the woods. The white pine logs in the woods were worth more; we assessed them higher, I think about \$6.00 probably, unless it was some place they thought it would take more than that to get them out. In some places I made a little difference, according to the location. Nine dollars for white pine logs down in the lake was comparatively low; they were selling, I thought, for more than that.

Q. In assessing other people's property you didn't try to give them any the worst of it as compared to the man that owned the logs, did you? I mean you didn't assess one man at one proportion and another man at another?

A. I had those instructions to go by.

Q. And you bore those in mind in all your assessments, so as to make it an equal tax all around? A. The logs and the lumber that I assessed, they were fixed rates that I worked on.

Q. You had that in mind when you made all your assessments, didn't you? A. What they were fixed at?

Q. Yes. A. Yes, but—

Q. And in assessing other property you had that always in mind, didn't you? A. I don't think that I did entirely.

Q. You did to some extent? In other words, you didn't want to assess one man at one per cent and another man at another per cent of the value, did you, Mr. Carlyle?

A. Not on the same kind of material, no.

Q. Well, on different kinds of material, did you?

A. When I went out to assess the farm lands—

Q. Just answer that. On different kinds of property did you assess at different rates in proportion to their value? A. No, sir.

Q. You tried to assess them all at the same proportion of their value, all kinds of property?

A. The logs, there would be a difference even in logs,—if you went out, there would be a dollar a thousand in some grades of logs, even, but I assessed them all the same. Yellow pine, for instance, there would be a dollar difference a thousand in different grades. Some men would have logs worth a dollar more, but I assessed them at the price fixed there. I didn't take the quality of the logs into consideration.

Q. Now, in assessing other property, you

would, of course, bear in mind the proportionate value which was placed upon logs, wouldn't you?

A. No, I wouldn't.

Q. Did you assess at from \$25.00 to \$40.00 an acre the first class agricultural land, and \$12.50 to \$25.00 an acre the second class agricultural land? A. Yes.

Q. Irrespective of what it was worth, you would stay within those limits? A. Yes.

Q. I expect some of that land was really worth more than \$40.00 an acre? A. A little of it that I assessed, but there was very little of it that was.

(Continuing) As a rule it wasn't a very good agricultural country up there that I assessed. I didn't assess any sawmills up in that country in 1918. I think I assessed the Blackwell Lumber Company sawmill. I tried to put a fair valuation on that. I had had a good deal of experience in the lumber business. I allowed very little because of the fact that it was not a perfectly new mill, because they keep their mills up to a standard; I took very little into consideration in that. I possibly did not assess it at as much as it would cost at that time to build a new mill like it. I did not assess the equipment as brand new, but they keep up the repairs, and it is in fairly good repair; I took into consideration that it was in fair condition, but not new, and made allowance for that, for the fact that it was not new, but it was in fair

condition; that was my effort. I did not cruise out the timber land. I took my figures for that from the year before, and then went through the land and saw that it hadn't been burnt. I just put down what was on there the year before, unless in my judgment I run across a particular piece; there was some few pieces that I think I did change, because I knew the land, but as a rule I didn't change the land. There was very little white pine land in that territory that I assessed. There is very little sale for white pine up in that country where I assessed, even now. It is remote, very hard to get to market, and I know parties that have got timber in there that want to sell, and there is no sale for it even now, even white pine. I gathered some agricultural data while I was on that trip, for the state and federal government; I got agricultural data for them. It was a part of my instructions. There were some stulls up there to assess. I think the figures in the instructions were too high for the stulls, and I think I lowered them because it would be in excess of the—I don't remember of assessing any poles up in that district. I had quite a little discussion with Mr. Wonacott before I went out, besides those instructions, a good deal of talk as to how the assessment should be made. I can't just recall to mind whether any of the other deputies were there talking too, at those conferences. There were deputies though in there at different times that I was in.

MR. POTTS: We offer Defendant's Exhibit 9 in evidence.

MR. GRAY: That is all.

MR. POTTS: That is all. As I understand it, the Court has held that testimony as to the cash value of bank shares is not admissible.

THE COURT: Yes.

MR. POTTS: Not material?

THE COURT: Yes.

MR. POTTS: We have one more witness who is to be here this evening. If he is not here, we wouldn't ask for any further delay.

MR. WAYNE: Counsel has agreed that the record might show that the rate in Shoshone County for 1918 was 7.3 mills, and the state rate in that county 2.7 mills. And the defendant offers Exhibit 1, being the statement identified by Mr. Herrick while on the witness stand.

(Recess until 7:30 P. M.)

7:30 P. M. Dec. 19, 1919.

MR. POTTS: The witness we have on the way has not yet arrived.

MR. GRAY: Is Mr. Kerchival here?

R. S. KERCHIVAL, recalled in rebuttal by plaintiff, testified:

DIRECT EXAMINATION:

I have one of the books of the assessment roll for 1918, the one which has the four corners on Fourth and Sherman. The corner on which this

building stands, in which this court is held, in 1918, was assessed for \$6000.00, fifty feet, and the improvements at \$16,000.00. These lots were all 110 feet originally.

Q. Now take the corner across the street, the old First National Bank building. A. There is a piece right in the corner of the old National Bank building that is 25x72, a piece of that building there; that piece of lot is assessed for \$3250.00, and the portion of the building on that lot is \$4000.00.

Q. And the other piece? A. The other piece—I was mistaken in that, Mr. Gray; those lines are crossed here.

Q. All right. A. The assessment for Waddell's corner was \$2750 for the lot and \$2500 for the building. The rest of the lot and building was assessed for \$3250 and \$4000.

Q. That would be \$12,500 for the whole building. Now the one on the other corner, the Morrow Mercantile?

A. That is 100 feet frontage. The corner is \$5200.00, and Lot No. 2 is \$4000.00, and the block is assessed for \$25,000.00.

THE COURT: By the block you mean the building?

A. The building, yes, sir.

(Continuing) That is that large three-story building, with a depth of 110 feet; I am not sure whether it is 105 or 110 on that side. It is a four-story building. The other corner, the Ex-

change National Bank building, is 35 feet on Sherman. The lot, 35 feet, is assessed at \$4800.00, and the improvements are \$5000.00. I think the lots in that block are 105 feet.

Q. Now, Mr. Kerchival, I want to ask you one other question. You testified today concerning some land which you had which was treated as irrigated land because it was within an irrigation district. Will you state whether or not you have adjoining that 160 acres of land of the same character or as good for agricultural purposes?

A. I haven't under the ditch. I have some that is not under the ditch.

Q. Is that as good land as that which you testified concerning? A. It is the same; there is nothing but a fifty-foot road between them.

Q. What was its reasonable value, that 160 acres, per acre, in 1918? A. Well, I should say it was some place between around \$57.50 or \$60.00 an acre. It was assessed for \$1000.00 a forty—\$25.00 an acre.

CROSS EXAMINATION:

The First National Bank building about which I testified is 25 feet by 72. The whole lot is 110, I believe. The total assessment for the whole lot on the corner would be \$6000.00 for the total lot and \$6500.00 for the buildings. I know the property here on Sherman Street known as the Peeper property, that belonged to the Monahan Investment Company. I don't believe I could tell you from the

roll what it was assessed for in 1918. The Granite Investment Company owned all of Reserve Block U, with the exception of three of four descriptions here, and the Peeper property is only a part of their holdings. It is the part that faces on Sherman, that is, part of their Sherman Street—It is not segregated on the roll.

(Witness excused.)

JOE PETERSON, sworn on behalf of plaintiff in rebuttal, testified as follows:

DIRECT EXAMINATION:

I reside at Coeur d'Alene, and am in the real estate business. I have lived in Coeur d'Alene twelve years, and have been engaged in that business during all that time, and have kept myself informed of real estate here and its values. I am familiar with this property known as the Wiggett block. In my judgment its fair cash value in the month of January, 1918, was \$60,000.00. In my judgment the fair value at the same time of the Exchange National Bank building and corner was \$35,000.00.

MR. POST: What is the assessment?

MR. GRAY: \$9800.00.

Q. The Morrow building, the large four-story building across the street, the lots and building?

A. \$75,000.00.

Q. The old First National Bank building and lots?

A. \$20,000.00.

Q. Mr. Peterson, of your own knowledge, do you know anything about the size of the mortgage upon that building?

A. On the First National Bank?

Q. Yes. A. \$10,000.00.

CROSS EXAMINATION:

Q. Those are a real estate man's valuations, are they, Mr. Peterson? A. Well, they are values that they ask for the property, and the property has been sold for more than that, that is, one of them has—two of them have, I think.

Q. That was years ago, wasn't it? A. A few years ago.

Q. Isn't it a fact that in 1918 there was no market value for any one of these properties or any other business property in Coeur d'Alene? A. Well, it was quiet during the war.

Q. Isn't it a fact that the owners of the building referred to here as the Morrow Mercantile Company building have been trying for years to slough that building, to sell or trade it, without success? Don't you know that of your own knowledge?

A. I know they have it listed with me.

(Continuing) I didn't know that they tried to trade it. Business property here in Coeur d'Alene in the winter of 1918 and for some time prior to that had been very slow, with very few sales, and very little demand for it. With reference to the old First National Bank building, the mortgage

I speak about was put on in connection with a trade of the building for some land some place. I don't know that business property on this street in 1918, and both before and after that date, was offered for sale at much less than the cost of the building, without buyers, the cost of the building, without any takers. I don't know that different buildings were offered at very low prices, without takers.

(Witness excused.)

FRED E. WONACOTT, heretofore duly sworn, upon being recalled in rebuttal, testified as follows:
DIRECT EXAMINATION:

Q. Mr. Wonacott, with reference to the two books of deeds the conveyances in which do not appear to be in your list, will you state, if you can, how that occurs? A. The two that were missed?

Q. Yes. A. That book 64, it seems to me I hunted for all the books of deeds there, and Mr. Kerchival told me where they were in the racks, and I don't believe that I found book 64. And if I did, why, I must have looked, glanced into it where some old deed was recorded, or several deeds, and I noticed there was lots of old deeds recorded in there, and consequently if I did look at it I thought it was a book of old deeds. I didn't intentionally omit it, but evidently didn't get it.

Q. Any book that you did use you took everything out of?

A. Everything, yes, sir.

Q. We didn't have the time to look through all these and compared them, did he? A. No.

Q. I notice on page 4 there is a consideration in a sale from Osborne to Russell & Pugh Lumber Company, which you had at \$9000.00, which Mr. Larsen had at \$7500.00.

A. Well, that is subject to a mortgage of \$1500. additional, and I added all those mortgages to the consideration, where it was expressly stated that it was subject to the mortgage. That was considered a part of the purchase price, and in that instance there that was it; I did that with all the deeds, where it showed those mortgages subject to the transfer.

Q. On page 2, in the conveyance from Kirkpatrick to the P. Lumber Co., Lots 3, 4 and 5, of 52, 5 west—did your notes show those accurately? A. Yes, sir, my notes—

Q. Just left out the 5 in the 52, 5 west? A. My notes showed it correctly, yes, sir.

Q. In other words, just point out to His Honor what was left out of this typewritten copy by the—Lots 3, 4 and 5, in 52, 5 west.

A. Those figures were left out in the transfer of my notes, in copying off on to this.

Q. But you had the assessed value of the land as a whole?

A. Yes, sir. My notes are correct.

Q. As far as you checked, were your notes correct?

A. Yes, sir.

Q. And those were just typographical errors?

A. Yes, sir.

Q. Are these your original notes, Mr. Wona-cott?

A. Yes, sir.

MR. GRAY: I would like to offer those in evidence.

Said papers were thereupon marked PLAIN-TIFF'S EXHIBIT No. 29.

MR. POTTS: If the original notes are deemed by the Court to have any value, we have no objection to them, but it seems to me they merely incumber the record.

THE COURT: I think I shall sustain the objection.

MR. GRAY: The only reason is to show that they were typographical errors.

THE COURT: Yes, I understand the reason.
CROSS EXAMINATION:

Q. You did not take the consideration as actually stated in the deed in each instance then, but used your own judgment from the contents of the instrument as to what the consideration ought to be? A. I took the consideration expressed in the deed, and in the body of the deed where it said it was sold subject to a mortgage of a certain

amount, I added the amount in a separate item on my notes to that amount. Mr. Larsen in taking it just simply took what was expressed as the consideration, and I don't think he followed down to take off that this was subject to the mortgage of \$1500.00; he omitted that. My notes are correct and his are not correct, so far as consideration is concerned.

Q. What was the consideration expressed in the instrument?

A. \$7500.00.

Q. And you found it was subject to mortgage of \$1500.00?

A. That was expressed in the body of the instrument.

Q. And you added that \$1500.00 to the consideration?

A. Yes, on my notes. I just said "Mortgage \$1500.00" under deed, and added it together, making \$9000.00, and when it was transferred, when the stenographers took it off they took it off at \$7500.00, I guess, and omitted the—I had it \$9000.00, and Mr. Larsen, when he checked it up, he only found and took the consideration.

Q. In other words, Mr. Larsen took the consideration expressed in the instrument, whereas you took the consideration as expressed and the mortgage and added the two together as the consideration? A. Yes. It is all in the records, though, in the body of the instrument.

Q. You had no means of knowing that the amount of the mortgage was deducted from the expressed consideration?

A. Yes, it expressly states that in the body of the instrument, that this deed is given subject to a mortgage, which the party of the second part assumes.

Q. And in each instance where that statement was made in the deed—A. Sometimes they didn't actually assume the mortgage, but I took those where it said subject to a mortgage of so much.

Q. In each instance where it said subject to a mortgage of a certain amount, you added that amount to the consideration expressed in the deed?

A. Yes, sir.

(Witness excused.)

MR. GRAY: There is just one thing, Mr. Potts. I haven't had, and I am going to ask you to permit me to forward when it is received, and that is a certified copy of that report of the Bureau of Farm Markets of this state. I have sent for it.

MR. POTTS: Well, if that will make it admissible. I think I objected to it not only on the ground of its competency, but that it was immaterial and irrelevant.

MR. GRAY: One of your objections was that we didn't have it certified. You said you would insist on that. That is one of those documents that is prepared by authority of the law of the state,

and I didn't think you ought to insist on that objection.

MR. POTTS: We stand on our objection that it is irrelevant and immaterial to the issues in the case, but not to the mere question of whether it is certified.

MR. GRAY: I have that uncertified copy here.

THE COURT: Let me see it again.

MR. POTTS: And add, that as far as the contents of the document are concerned they are not competent evidence to prove any issues in this case.

THE COURT: I think I shall have to sustain the objection upon the ground last stated, gentlemen. I don't believe this can be received as competent evidence of the value of the property. I understood you are offering it as evidence of the value of lands.

MR. GRAY: Oh, indeed not, no.

THE COURT: I see that there are statements to the effect that the lands in a certain county are worth so much.

MR. GRAY: I don't offer it for any such purpose. I offered it simply for the purpose of getting before the court the compilation of the several reports of the several assessors of the state, made in compliance with the laws that required those assessors to report to the State Bureau of Farm Markets each year the production of the various grains and hays and agricultural products in their several

counties. In the direction to the deputies which has been put in here Your Honor will remember that they were directed—

THE COURT: Yes, but then what? Suppose that those facts be taken as proven, and suppose we regard this as competent for the purpose of showing the production of the various counties and the various lands?

MR. GRAY: They approximate in dollars the assessed value of the lands on which they were grown. The comparison is so striking. I don't say they exactly do, but they equal within millions—for instance, on an assessed valuation I think of a hundred and twenty million dollars, the production of agricultural crops from those same assessors' reports is approximately ninety-eight million dollars. Those pages are the ones that I wanted. I don't know as they are numbered.

THE COURT: I think I shall sustain the objection.

MR. GRAY: Your Honor will permit me to make the record?

THE COURT: Yes. It may go in for that purpose.

MR. GRAY: The only part of it I care about is that part, agricultural data for 1917, compiled from the reports of county assessors in compliance with Chapter 115 of the Laws of 1917.

THE COURT: It is for both 1917 and 1918, isn't it?

MR. GRAY: Yes. That which I particularly desire is for 1917. But I offer both years.

That is all.

MR. POTTS: We have no further testimony.

It is hereby stipulated that the foregoing statement of the evidence, is a true, complete and properly prepared statement of the testimony (excepting only the exhibits which are separately certified) offered at said trial of said actions consolidated for trial, and that the same, without notice, may be settled and certified as such by the Court or Judge.

Dated this 23rd day of June, 1920.

John P. Gray, W. F. McNaughton,
Frank T. Post

Attorneys for Plaintiff,

Bert A. Reed, Potts & Wernette
Attorneys for Kootenai County

et al, Defendants,

H. J. Hull,

James A. Wayne,

Attorneys for Shoshone County
et al, Defendants.

The undersigned Judge of the District Court of the United States for the District of Idaho, Northern Division, being the Judge who tried the above entitled action, does hereby certify that said actions were consolidated for trial, and that the foregoing statement contains in substance all of the evidence introduced upon the trial of said actions (excepting

the exhibits introduced on the trial thereof, to be separately certified by the Clerk of said Court and by him transmitted to the United States Circuit Court of Appeals for the Ninth Circuit) and also contains in substance all the proceedings had upon the trial of said actions, and is approved and settled as a true, and complete and properly prepared statement of the evidence (excepting exhibits) in said cases and each of them, in accordance with equity rule 75.

Dated this 10th day of July, 1920.

Frank S. Dietrich,

Judge.

Lodged July 3, 1920

Endorsed Filed July 10, 1920.

W. D. McReynolds, Clerk.

(Title of Court and Cause)

NO. 732.

STIPULATION THAT EXHIBITS MAY BE
CONSIDERED PART OF STATEMENT OF
EVIDENCE:

It is hereby stipulated and agreed by and between the parties hereto that all of the exhibits in said cause may in their original form be considered a part of the statement of the evidence and the proceedings of the court to be settled by the judge of the above entitled court, and that all of the said exhibits of whatsoever kind and character may in their original form be certified by the clerk of the above entitled court to the clerk of the cir-

cuit Court of Appeals of the United States, for the Ninth Circuit, as a part of the record on appeal in the above entitled action, said exhibits to be considered by the Circuit Court of Appeals for the Ninth Circuit aforesaid, in the consideration of the appeal in the above entitled action.

Dated this 26th day of June, 1920.

John P. Gray

F. T. Post

W. F. McNaughton

Attorneys for Plaintiff

Bert A. Reed

Potts & Wernette,

Attorneys for Defendants

Endorsed Filed July 3, 1920.

W. D. McReynolds, Clerk.

(Title of Court and Cause)

NO. 732.

PETITION FOR APPEAL AND ALLOWANCE:
TO THE HONORABLE FRANK S. DIETRICH,
JUDGE OF THE DISTRICT COURT OF THE
UNITED STATES, FOR THE DISTRICT OF
IDAHO:

The above named plaintiff, The Washington Water Power Company, considering itself aggrieved by the decree entered in the above entitled court on the 28th day of May, 1920, in the above entitled cause, does hereby appeal from the said decree to the United States Circuit Court of Appeals

for the ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and prays that an appeal be allowed and a citation issue as provided by law, and that a transcript of the record and proceedings upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner further prays that an order may be entered herein, restraining the defendants and their successors from disposing of or selling the tax sale certificate issued by the defendant county for the year 1918 upon the plaintiff's property or issuing to the defendant county or to any one else a tax deed upon the property of the plaintiff for or on account of taxes for the year 1918, either during the pendency of said appeal, or if the plaintiff shall within thirty days after the final disposition of said cause pay to the defendant county the sum found to be due by the said decree to the defendant county herein, together with interest thereon, or such portion or part thereof as may be found due upon the said final disposition of said cause, together with interest thereon.

And your petitioner herewith offers a good and sufficient bond in the penal sum of \$14,500.00, conditioned upon the payment of the sum found to be due to the defendant county herein by said decree, together with interest thereon, or such portion thereof as may be found due upon the final disposi-

tion of said cause, together with interest thereon.

Your petitioner further in this behalf tenders a stipulation made and entered into between the plaintiff and the defendants consenting to such order.

John P. Gray

F. T. Post

W. F. McNaughton

Solicitors for Plaintiff.

The foregoing petition is hereby granted and the appeal is allowed in the above entitled cause, and in pursuance of the written stipulation filed herein and because of said stipulation it is

ORDERED that the amount of the bond on appeal be and the same is hereby fixed in the sum of Five Hundred Dollars (\$500).

Dated this 10th day of July, 1920.

Frank S. Dietrich,

Judge.

Endorsed, Filed July 3, 1920,

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause)

NO. 732.

ASSIGNMENT OF ERRORS:

Comes now the plaintiff and files the following assignment of errors upon which it will rely upon the prosecution of its appeal from the decree made and entered by this Honorable Court on the 25th day of May, 1920, in the above entitled cause:

I.

The court erred in finding, holding and deciding that the full cash value of the property of the Washington Water Power Company situated in the State of Idaho and subject to taxation in the State of Idaho on the second Monday in January, 1918, exclusive of the lighting system in the City of St. Maries, Idaho, was the sum of \$3,587,500.

II.

The court erred in finding, holding and deciding that the full cash value of the property of the appellant situated in the State of Idaho and subject to taxation in that state on the second Monday in January, 1918, exclusive of the lighting system of the city of St. Maries, Idaho, was greater than the sum of \$2,438,978.

III.

The court erred in finding, holding and deciding that the State Board of Equalization of the State of Idaho, in assessing the property of the plaintiff for the year 1918, found that the value of the property of the plaintiff located in the State of Idaho and subject to taxation in said state was the sum of \$3,587,500, exclusive of the lighting system in the City of St. Maries, Idaho.

IV.

The court erred in finding, holding and deciding that the State Board of Equalization of the State of Idaho, in assessing the operating property of the plaintiff in the State of Idaho, for the year 1918,

found that the total actual value of the operating property of the plaintiff in the State of Idaho was the sum of \$3,620,500.

V.

The court erred in finding, holding and deciding that the State Board of Equalization intended its assessment upon the operating property of this plaintiff for the year 1918, to be upon a basis of 75% of the actual cash value thereof on the second Monday of January, 1918.

VI.

The court erred in finding, holding and deciding that the actual or full cash value of the operating property of the Washington Water Power Company located in the State of Idaho, exclusive of the lighting system in the City of St. Maries, Idaho, was found to be or fixed by the Public Utilities Commission of the State of Idaho at the value of \$3,587,500 on the 31st day of December, 1917.

VII.

The court erred in finding, holding and deciding that the State Board of Equalization of the State of Idaho, in the year 1918, assessed the operating property of all of the railroads, telegraph, telephone and electric current transmission lines within the sphere of the duty of said State Board of Equalization at 75% of its full cash value, or upon an equality with or upon the same footing as the property of the plaintiff.

VIII.

The court erred in finding, holding and deciding that bank stock was assessed in excess of 50% of its actual cash value in the County of Kootenai or in the State of Idaho.

IX.

The court erred in finding, holding and deciding that property in the County of Kootenai, State of Idaho, amounting to the sum of \$6,930.090, consisting of property assessed by the State Board of Equalization and of bank stock, was assessed on a basis of 75% of its full cash value.

X.

The court erred in finding, holding and deciding that the State Board of Equalization of the State of Idaho, for the year 1918, assessed any property other than that of plaintiff in the County of Kootenai within the sphere of its duty at a rate greater than 50% of its full cash value.

XI.

The court erred in finding, holding and deciding that as to the property in the County of Kootenai State of Idaho, assessed by the State Board of Equalization for the year 1918, and within the sphere of its duty and as to bank stock the plaintiff was entitled to no relief.

XII.

The court erred in finding, holding and deciding that there has been any appreciation in the value of the operating property of the plaintiff in the State of

Idaho and subject to taxation in said State, or that any appreciation in value thereof or any value as a going concern equals or substantially equals the depreciation thereof.

XIII.

The court erred in finding, holding and deciding that the value of the operating property of the Washington Water Power Company in the State of Idaho and subject to taxation in said State for the year 1918 was a sum in excess of the depreciated value thereof as found by the Public Utilities Commission of the State, to-wit, the sum of \$2,487,999.

XIV.

The court erred in finding, holding and deciding that the property of the Washington Water Power Company in the County of Kootenai, State of Idaho, should be required for the year 1918 to pay taxes upon any sum in excess of 50% of its full cash value on the second Monday in January, 1918.

XV.

The court erred in finding, holding and deciding that the plaintiff should be required to pay taxes for the year 1918 in Kootenai County, on its property in said county, on any basis greater than 50% of the portion of \$2,487,999, distributed to Kootenai County.

XVI.

The court erred in assuming or deciding that the railroad companies, telephone companies and other public utilities, except plaintiff, had in fact paid

taxes in the State of Idaho on the basis of 75% of the value of their respective properties.

XVII.

The court erred in assuming or deciding that the railroad companies, telephone companies and other public utilities had instituted no action either at law or in equity for the purpose of being relieved against their unequal and unjust assessment in said County of Kootenai and for the purpose of being put on an equality as to property generally in said County of Kootenai, so that they would be required to pay taxes on the basis of 50% of the value of their respective properties the same as other property exclusive of the property of this plaintiff in said county was required to pay by the taxing officers.

XVIII.

The court erred in assuming or deciding that the railroad companies, telephone companies, and other public utilities had no cause of action for the recovery of moneys unlawfully exacted of them on account of taxes for the year 1918, because of the unequal and unjust assessment of their respective properties.

XIX.

The court erred in deciding that if the railroad companies, telephone companies and other public utilities were assessed in the year 1918 upon their respective properties for taxation purposes at a higher rate than property was generally assess-

ed, that therefore this plaintiff could be compelled to pay taxes at a higher rate than owners of other property were required to pay.

XX.

The court erred in undertaking to decide and adjudicate the rights of the railroad companies, telephone companies and other public utilities which are not parties to this litigation and to determine the plaintiff's rights on the basis of such attempted adjudication of rights of such other companies.

XXI.

The court erred in denying to the plaintiff any relief as to 7-19ths of the property of the plaintiff situated in the County of Kootenai, State of Idaho.

XXII.

The court erred in finding, holding and deciding that there is still due to the defendant on account of unpaid taxes the sum of \$10,049.32 or any sum.

XXIII.

The court erred in finding, holding and deciding that the appellant is subject to pay any penalty or interest upon any sum to the County of Kootenai, State of Idaho, or that any penalties or interest should be imposed.

WHEREFORE, plaintiff prays that the decree be reversed and plaintiff be given such relief as the nature of the case demands.

John P. Gray, F. T. Post,
W. F. McNaughton

Solicitors for Plaintiff.

Service of the foregoing Assignment of Errors admitted and a copy thereof received this 30th day of June, 1920.

BERT A. REED, POTTS & WERNETTE,
Solicitors for Defendant.

Endorsed: Filed July 3, 1920.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause)

No. 732.

BOND.

KNOW ALL MEN BY THESE PRESENTS, That The Washington Water Power Company, a corporation, as principal and The Aetna Casualty and Surety Company a corporation, as surety, are held and firmly bound unto the County of Kootenai, a municipal corporation of the State of Idaho, in the sum of \$14,500.00, to be paid to the said Kootenai County, for the payment of which well and truly to be made we bind ourselves and each of us and our and each of our successors and assigns jointly and severally firmly by these presents.

Sealed with our seals and dated this 26th day of June, 1920.

WHEREAS the above named plaintiff, The Washington Water Power Company, has prosecuted or is about to prosecute an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree rendered in the above

entitled cause in the District Court of the United States for the District of Idaho, Northern Division, which judgement was dated May 28th, 1920, the condition of this obligation is such that if the above named The Washington Water Power Company, shall prosecute said appeal to effect and shall pay unto Kootenai County, Idaho, the amount of said judgment, namely the sum of \$12,431.20, together with interest thereon, or such portion or part thereof as may be found due upon the final disposition of said cause, interest to be calculated at the rate of 7% per annum, then this obligation shall be void, otherwise it shall remain and be in full force and virtue.

(Corporate Seal)

Attest:

THE WASHINGTON WATER POWER
COMPANY

By D. L. HUNTINGTON,

Its President,

Principal.

B. KALLEN

Asst. Secretary

(Corporate Seal)

THE AETNA CASUALTY AND
SURETY COMPANY,

By HERMAN J. ROSSI

Its Resident Vice President

Surety

Attest:

R. S. CLAUGH,

Its Resident Assistant Secretary.

(Corporate Seal)

Approved July 10, 1920.

FRANK S. DIETRICH

Judge.

Service of the foregoing Bond acknowledged approved and copy thereof received this 30th day of June, 1920.

BERT A. REED,

POTTS & WERNETTE,

Attorneys for Defendants.

(\$1.45 U. S. I. R. Stamp)

The premium on this bond is \$145.00 and requires and has attached a documentary stamp of \$1.45, being one per cent of the premium in accordance with Title VIII., Schedule A., Paragraph 2 of the Federal War Revenue Act approved by the President October 3, 1917.

STATE OF IDAHO,

COUNTY OF SHOSHONE

} ss.

On this 26 day of June, 1920, before the undersigned, a Notary Public in and for the State aforesaid, personally appeared Herman J. Rossi, and R. S. Claugh, known to me to be the Resident Vice President and Resident Asst. Secretary, respectively of the Aetna Casualty and Surety Company, the corporation that executed the foregoing

instrument and acknowledged to me that such corporation executed the same; that they know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was affixed by order of the Board of Directors of said company; that they signed their names thereto by like order; that the said company has been duly licensed by the Insurance Commissioner of the State of Idaho to transact a surety business in the State of Idaho and is authorized by the laws of the State of Idaho to become sole surety upon bonds.

M. W. ALLEN

Notary Public for Idaho, residing at Wallace, Idaho,

My commission expires May 9, 1922.

(N. P. Seal)

Lodged July 3, 1920

Endorsed: Filed July 10, 1920.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause)

No. 732.

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS,
That we, The Washington Water Power Company,
a corporation, as principal, and The Aetna Casualty and Surety Company, a corporation organized and existing under and by virtue of the laws of Connecticut, as surety, are held and firmly bound unto Kootenai County, a municipal corporation, W.

A. Thomas, as Treasurer and Ex-officio Tax Collector of Kootenai County, Idaho, and C. O. Sowder, Clerk of the District Court and Ex-officio Auditor and Recorder of Kootenai County, Idaho, and C. O. Sowder and W. A. Thomas, individuals, in the sum of Five Hundred Dollars (\$500), for the payment of which well and truly to be made we bind ourselves, jointly and severally, and each of our successors and assigns, firmly by these presents.

Sealed with our seals and dated this 26th day of June, 1920.

WHEREAS, the above named plaintiff, to-wit, the principal in this obligation, has prosecuted or is about to prosecute an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse a decree made and entered in said cause on the 28 day of May, 1920, in favor of the defendants in the above entitled action.

NOW THEREFORE, the condition of this obligation is such that if the said plaintiff shall prosecute its said appeal to effect and answer all damages and costs, if it fails to make its plea good, and if the said decree be affirmed by the said United States Circuit Court of Appeals, or by the Supreme Court of the United States, then the above obligation is void, otherwise to remain in full force and virtue.

It is expressly agreed by the Aetna Casualty and Surety Company, the surety above named, that in case of a breach of any condition of this bond, the

court may, upon notice of not less than thirty days to said The Aetna Casualty and Surety Company, proceed summarily in this action to ascertain the amount which said surety is bound to pay on account of such breach and render judgment against said The Aetna Casualty and Surety Company and award execution therefor.

Attest:

THE WASHINGTON WATER POWER CO.,

By D. L. HUNTINGTON

B. KALLEN,

Its President

Asst. Secretary

(Corporate Seal)

THE AETNA CASUALTY & SURETY
COMPANY,

By HERMAN J. ROSSI

Attest:

Its Resident Vice President

R. S. CLAUGH

Its Resident Asst. Secretary

(Corporate Seal)

Approved: July 10, 1920.

FRANK S. DIETRICH,

Judge.

Service of the foregoing Bond on appeal acknowledged approved and copy thereof received this 30th day of June, 1920.

BERT A. REED,

POTTS & WERNETTE,

Attorneys for Defendant.

(10 cent U. S. I. R. Stamp)

The premium on this bond is \$10, and requires and has attached a documentary stamp of ten cents, being one per cent of the premium in accordance with Title VIII., Schedule A., Paragraph 2, of the Federal War Revenue Act approved by the President October 3, 1917.

STATE OF IDAHO,

ss.

COUNTY OF SHOSHONE

On this 26th day of June, 1920, before me, a Notary Public for the State of Idaho, personally appeared Herman J. Rossi and R. S. Claugh, known to me to be the Resident Vice President and Resident Assistant Secretary respectively of the Aetna Casualty & Surety Company, the corporation that executed the foregoing instrument and acknowledged to me that such corporation executed the same; that they know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was affixed by order of the Board of Directors of said company; that they signed their names thereby by like order; that the said company has been duly licensed by the Insurance Commissioner of the State of Idaho to transact business in the State of Idaho and is authorized by the law of the State of Idaho to become sole surety upon bonds.

M. W. ALLEN,

*Notary Public for Idaho, residing at Wallace,
Idaho.*

My Commission Expires May 9th, 1922.

(N. P. Seal)

Lodged July 3, 1920.

Endorsed: Filed July 10, 1920.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)
No. 732.

STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that the bond on appeal herein shall be fixed at the sum of Five Hundred Dollars (\$500) with the consent of the Court.

Dated this 26th day of June, 1920.

JOHN P. GRAY,

F. T. POST,

W. F. McNAUGHTON,

Attorneys for Plaintiff.

BERT A. REED,

POTTS & WERNETTE,

Attorneys for Defendants.

Endorsed, Filed July 3, 1920,

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)
No. 732.

STIPULATION.

WHEREAS, final decree is about to be entered in this cause under and by virtue of which the

court has announced it will decree that inclusive of penalties and interest to the date of said judgment there is due from the plaintiff to the defendant county on account of taxes in said county for the year 1918 upon the plaintiff's property situated in Kootenai County, Idaho, and described in the complaint, a balance of \$12,431.20; that the plaintiff shall pay and defendant county shall receive and accept said balance with interest thereon from the date of said judgment at the rate of 7% per annum in full payment and satisfaction of the said taxes upon plaintiff's property in Kootenai County, Idaho, for said year, and that the defendants and each of them and their successors be perpetually enjoined from selling the property of the plaintiff described in the bill of complaint for and on account of said taxes or attempting in any manner to collect any further sum on account thereof; and

WHEREAS, a tax sale certificate has been issued by said county and is now held by said county for the taxes for the year 1918 and the court has heretofore issued an injunction pending the litigation, enjoining and restraining the said defendant county and its officers from disposing of or selling the said tax sale certificate pending the determination of this action; and

WHEREAS, the plaintiff desires to perfect an appeal from the said decree and the defendants are willing that such order may be made herein as will protect the plaintiff against the sale or disposal

of said tax sale certificate or the issuance of any tax deed pending said appeal.

NOW THEREFORE IT IS STIPULATED that the court may enter an order herein restraining the defendants and their successors from disposing of or selling said or any tax sale certificate for the year 1918 upon the plaintiff's property or issuing either to the defendant county or to any one else any tax deed upon the property of the plaintiff for or on account of taxes for the year 1918 during the pendency of said appeal, or if the plaintiff shall within thirty days after the final disposition of said cause pay to the defendant county the sum found to be due by the said decree to the defendant county herein, together with interest thereon, or such portion or part thereof as may be found due upon the said final disposition of said cause, together with interest thereon. The order shall be conditional upon the complainant filing a good and sufficient bond with surety or sureties to be approved by the court in the penal sum of \$14,500.00, conditioned upon the payment of \$12,431.20 the sum found to be due to the defendant county herein by said decree, together with interest thereon or such portion or part thereof as may be found due upon the final disposition of said cause, together with interest thereon.

It is further stipulated that upon the payment within thirty days from the final disposition of this cause in any court to which it may be removed of the sum found to be due to the defendant county

herein by said decree, together with interest thereon, or such portion or part thereof as may be found to be due upon the final disposition of said cause, with interest thereon, that the said tax sale certificate shall be cancelled and that the court may enter an order protecting the said plaintiff in that respect pending the said final determination.

Dated this. day of May, 1920.

JOHN P. GRAY,

F. T. POST,

W. F. McNAUGHTON,

Attorneys for Plaintiff.

BERT A. REED,

POTTS & WERNETTE,

Attorneys for Defendants.

Endorsed, Filed July 3, 1920,

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

No. 732.

ORDER OF INJUNCTION PENDING
APPEAL.

The complainant in the above entitled cause having served and filed a petition for an order allowing an appeal from the decree in said cause to the United States Circuit Court of Appeals for the Ninth Circuit, and for an order of injunction pending the said appeal, restraining the defendants and their successors from selling or disposing of any tax sale certificate upon the property of the plaintiff in the

County of Kootenai, State of Idaho, for any taxes due upon said property or any thereof for the year 1918, and from issuing any tax deed to said property or any thereof, and having presented to this court a stipulation in writing in words as follows, to-wit: (omitting the title of this court and cause):

WHEREAS final decree is about to be entered in this cause under and by virtue of which the court has announced it will decree that inclusive of penalties and interest to the date of said judgment there is due from the plaintiff to the defendant county on account of taxes in said county for the year 1918 upon the plaintiff's property situated in Kootenai County, Idaho, and described in the complaint, a balance of \$12,431.20; that the plaintiff shall pay and the defendant county shall receive and accept said balance with interest thereon from the date of said judgment at the rate of 7% per cent per annum in full payment and satisfaction of the said taxes upon plaintiff's property in Kootenai County, Idaho, for said year, and that the defendants and each of them and their successors be perpetually enjoined from selling the property of the plaintiff described in the bill of complaint for and on account of said taxes or attempting in any manner to collect any further sum on account thereof; and

WHEREAS, a tax sale certificate has been issued by said county and is now held by said county for the taxes for the year 1918 and the court has here-

tofore issued an injunction pending the litigation, enjoining and restraining the said defendant county and its officers from disposing of or selling the said tax sale certificate pending the determination in this action; and

WHEREAS, the plaintiff desires to perfect an appeal from the said decree and the defendants are willing that such order may be made herein as will protect the plaintiff against the sale or disposal of said tax sale certificate or the issuance of any tax deed pending said appeal.

NOW THEREFORE IT IS STIPULATED that the court may enter an order herein restraining the defendants and their successors from disposing of or selling said or any tax sale certificate for the year 1918 upon the plaintiff's property or issuing either to the defendant county or to any one else any tax deed upon the property of the plaintiff for or on account of taxes for the year 1918 during the pendency of said appeal, or if the plaintiff shall within thirty days after the final disposition of said cause pay to the defendant county the sum found to be due by the said decree to the defendant county herein, together with interest thereon, or such portion or part thereof as may be found due upon the said final disposition of said cause, together with interest thereon. The order shall be conditional upon the complainant filing a good and sufficient bond with surety or sureties to be approved by the court in the penal sum of \$14,500, conditioned upon

the payment of \$12,431.20 the sum found to be due to the defendant county herein by said decree, together with interest thereon or such portion or part thereof as may be found due upon the final disposition of said cause, together with interest thereon.

It is further stipulated that upon the payment within thirty days from the final disposition of this cause in any court to which it may be removed of the sum found to be due to the defendant county herein by said decree, together with interest thereon, or such portion or part thereof as may be found to be due upon the final disposition of said cause, with interest thereon, that the said tax sale certificate shall be cancelled and that the court may enter an order protecting the said plaintiff in that respect pending the said final determination.

Dated this.....day of May, 1920.

And the plaintiff having filed in this court a bond in the penal sum of \$14,500, as provided for in said stipulation, and the court being of the opinion that the said stipulation is a just and proper one,

IT IS HEREBY ORDERED:

- (1) That the said bond be approved;
- (2) That the said defendants and each of them and their successors be restrained from disposing of or selling any tax sale certificate issued by the County of Kootenai, State of Idaho, or its officers for the year 1918 upon the plaintiff's property in

said Kootenai County, or any thereof, and also from issuing either to the defendant county or to any one else any tax deed upon the property of the plaintiff for or on account of taxes for the year 1918 either pending the said appeal or if the plaintiff shall within thirty days after the final disposition of this cause pay to the defendant county the sum found due by the said decree of this court to the defendant county hereon, together with interest thereon, or such portion or part thereof as may be found due upon the said final disposition of said cause, together with interest thereon, and the said defendants and their successors are enjoined from either selling or disposing of any such tax sale certificate or issuing any tax deed for any taxes upon the plaintiff's property for the year 1918 pending the said appeal or for thirty days thereafter or at all if the said plaintiff shall within thirty days after the final disposition of said cause upon appeal in the said United States Circuit Court of Appeals for the Ninth Circuit, or in the United States Supreme Court, pay any such sum so ultimately found to be due from the plaintiff to the said Kootenai County, Idaho, for said taxes for the year 1918.

Dated this 10th day of July, 1920.

FRANK S. DIETRICH,

Judge.

O. K.

POTTS & WERNETTE,

BERT A. REED.

Endorsed, Filed July 10, 1920,

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)
No. 732.

PRAECIPE.

TO W. D. McREYNOLDS, CLERK OF THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF IDAHO:

You will please prepare a transcript on appeal herein including therein the following papers, to-wit:

Final record herein, including the amended bill of complaint; subpoena in equity; motion to dismiss amended bill of complaint; motion to strike amended bill of complaint; order overruling motion to dismiss and denying motion to strike; answer of defendants; stipulation consolidating this case with Case No. 733 for trial; decree; certificate of clerk.

Also include in said transcript the opinion of the court in deciding the case; also the opinion in the case of the Washington Water Power Company, a corporation, v. Shoshone County, a municipal corporation, et al., No. 733; statement of evidence and proceedings; stipulation settling statement of evidence; stipulation that exhibits may be certified in their original form and made a part of the record herein and a part of the statement herein; also the following exhibits in the case:

Plaintiff's Exhibit No. 3, Abstract of real property, assessment Twin Falls Co.

Plaintiff's Exhibit No. 4, Abstract of values from records of several Counties.

Plaintiff's Exhibit No. 10, Proof of Publication, Capital News.

Plaintiff's Exhibit No. 11, Proof of Publication, Lewiston Tribune.

Plaintiff's Exhibit No. 12, Dept. of Agriculture Report, Re-Idaho products.

Plaintiff's Exhibit No. 14, Annual report of W. W. P. Co. 1917.

Plaintiff's Exhibit No. 15, Findings of Public Utilities Commission.

Plaintiff's Exhibit No. 16, Coeur d'Alene Mining data—plaintiff.

Plaintiff's Exhibit No. 17, Data compiled and used before State Board.

Plaintiff's Exhibit No. 18, Statement of Revenue of Plaintiff.

Plaintiff's Exhibit No. 19, Statement of operating expenses of Plaintiff.

Plaintiff's Exhibit No. 20, Statement showing tax percentage on revenue.

Plaintiff's Exhibit No. 21, Data on flow of Spokane River.

Plaintiff's Exhibit No. 23, Condensed Estimate of production cost.

Plaintiff's Exhibit No. 25, Official statement, Re: Bonds, Idaho Falls.

Plaintiff's Exhibit No. 26, Statement of Bonds, Blackfoot, Idaho.

Plaintiff's Exhibit No. 27, Transcript of proceedings, Nampa Highway Dist.

Plaintiff's Exhibit No. 28, Statement on bonds in Twin Falls County.

Exhibit No. 1—Case F. 54.

Defendants' Exhibit No. 1, Statement, Re-Shoshone County.

Defendants' Exhibit No. 5, Abstract of assessment roll—State.

Defendants' Exhibit No. 6, Abstract of assessment roll—State.

Defendants' Exhibit No. 7, Abstract of assessment roll—Kootenai County.

Defendants' Exhibit No. 8, Abstract of assessment roll—Kootenai County.

Defendants' Exhibit No. 9, Instructions to Deputy Assessor Kootenai County.

Also assignment of errors; petition for appeal and order allowing the same; bond on appeal and order allowing the same; stipulation with reference to bond; stipulation with reference to injunction pending appeal; order with reference to injunction pending appeal; citation and acknowledgement of service; this praecipe and the certificate of the clerk.

JOHN P. GRAY,
F. T. POST,
W. F. McNAUGHTON,
Solicitors for Plaintiff.

Due service of the foregoing praecipe admitted this 30th day of June, 1920; and the right to file a praecipe herein, indicating additional portions of the record, to be included in said transcript, is hereby waived; and consent is given that the said transcript may be immediately prepared, containing the portions of said record indicated in the above and foregoing praecipe.

BERT A. REED,
POTTS & WERNETTE,
Solicitors for Defendants.

Endorsed, Filed July 3, 1920,
W. D. McREYNOLDS, Clerk.

CITATION ON APPEAL.

*In the District Court of the United States, for the
District of Idaho, Northern Division.*

The Washington Water Power Company,
a Corporation,

Plaintiff,

vs.

Kootenai County, a Municipal Corporation;
W. A. Thomas as Treasurer and Ex-
Officio Tax Collector of Kootenai County,
Idaho, and C. O. Sowder, Clerk of the
District Court and Ex-Officio Auditor
and Recorder of Kootenai County, Idaho,
and C. O. Sowder and W. A. Thomas, In-
dividuals,

Defendants.

THE PRESIDENT OF THE UNITED STATES
TO KOOTENAI COUNTY, A MUNICIPAL

CORPORATION; W. A. THOMAS AS TREASURER AND EX-OFFICIO TAX COLLECTOR OF KOOTENAI COUNTY, IDAHO, AND C. O. SOWDER, CLERK OF THE DISTRICT COURT AND EX-OFFICIO AUDITOR AND RECORDER OF KOOTENAI COUNTY, IDAHO, AND C. O. SOWDER AND W. A. THOMAS, INDIVIDUALS, THE ABOVE NAMED DEFENDANTS, AND TO BERT A. REED AND POTTS & WERNETTE, ATTORNEYS FOR SAID DEFENDANTS:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, within thirty (30) days from the date hereof, pursuant to an appeal filed in the office of the Clerk of the District Court of the United States, for the District of Idaho, Northern Division, wherein The Washington Water Power Company, a corporation, is appellant and Kootenai County, a municipal corporation, W. A. Thomas as Treasurer and Ex-Officio Tax Collector of Kootenai County, Idaho, and C. O. Sowder, Clerk of the District Court and Ex-Officio Auditor and Recorder of Kootenai County, Idaho, and C. O. Sowder and W. A. Thomas, individuals, are appellees, to show cause, if any there be why the said decree in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties on that behalf.

WITNESS the Honorable Frank S. Dietrich, Judge of the District Court of the United States for the District of Idaho, this 10th day of July, 1920, and of the Independence of the United States the one hundred and forty-fourth, at the City of Boise, State of Idaho.

FRANK S. DIETRICH,
Judge.

Service of the foregoing citation on appeal acknowledged and a copy thereof received this 13th day of July, 1920.

BERT A. REED,
POTTS & WERNETTE,
Attorneys for Defendants.

RETURN TO RECORD.

And thereupon it is ordered by the court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

ATTEST:

(Seal)

W. D. McREYNOLDS,
Clerk.

(Title of Court and Cause.)
No. 732.

CLERK'S CERTIFICATE.

I, W. D. McReynolds, Clerk of the District Court

of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 360 inclusive, to be full, true and correct copies of the pleadings and proceedings in the above entitled cause, and that the same, together with volume of exhibits, constitute the transcript on appeal to the United States Court of Appeals for the Ninth Circuit, as requested by the praecipe for such transcript.

Upon order, plaintiff's original exhibits numbered 1, 2, 5, 6, 7, 8, 9, 10, 13, 22, 24, and 30, are transmitted herewith and form a part of the record hereof.

I further certify that the cost of the record herein amounts to the sum of \$1509.00, and that the same has been paid by the appellant.

Witness my hand and the seal of said court this 27th day of August, 1920.

(Seal)

W. D. McREYNOLDS,
Clerk.